

35 pages

MT LEGISLATIVE HISTORY

Chapter 805 19 91

Bill H _____ S 266

Original bill & hist. C

H. Committee on Natural Resources

S. Committee on Natural Resources

Hearing Date(s) Mar 14 ☒ C

Hearing Date(s) Feb 11 ☒ C

Mar 19 ☒ C

Feb 18 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 20 ☒ C

Feb 19 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Note: A conference committee and a free conference committee were appointed. Their minutes were not recorded.

SENATE FINAL STATUS

SB 266

TRANSMITTED TO HOUSE			
3/04	FIRST READING		
3/04	REFERRED TO STATE ADMINISTRATION		
3/14	HEARING		
3/14	TABLED IN COMMITTEE		
3/19	TAKEN FROM TABLE		
3/19	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	70	24
3/25	3RD READING CONCURRED	71	25
RETURNED TO SENATE WITH AMENDMENTS			
3/28	2ND READING AMENDMENTS CONCURRED	49	0
4/01	3RD READING AMENDMENTS CONCURRED	48	0
4/03	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/04	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 365		
		EFFECTIVE DATE: 4/06/91	

SB 265 INTRODUCED BY GROSFIELD, ET AL.

CLARIFY RIGHT TO BENEFICIALLY USE, SELL, OR LEASE
SALVAGED WATER
BY REQUEST OF GOVERNOR

2/02 INTRODUCED			
2/02 FISCAL NOTE REQUESTED			
2/04 REFERRED TO NATURAL RESOURCES			
2/04 FIRST READING			
2/08 FISCAL NOTE RECEIVED			
2/11 HEARING			
2/11 FISCAL NOTE PRINTED			
2/18 REVISED FISCAL NOTE RECEIVED			
2/19 COMMITTEE REPORT—BILL PASSED AS AMENDED			
2/20	2ND READING PASSED	49	0
2/21	3RD READING PASSED	45	2
TRANSMITTED TO HOUSE			
3/04 FIRST READING			
3/04 REFERRED TO NATURAL RESOURCES			
3/14 HEARING			
3/15 COMMITTEE REPORT—BILL CONCURRED			
3/18	2ND READING CONCURRED	85	3
3/19	3RD READING CONCURRED	88	11
RETURNED TO SENATE			
3/26	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 308		
		EFFECTIVE DATE: 10/01/91	

SB 266 INTRODUCED BY GROSFIELD, ET AL.

/ REVISE THE MONTANA WATER USE LAWS
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

2/02 INTRODUCED			
2/02 FISCAL NOTE REQUESTED			
2/04 REFERRED TO NATURAL RESOURCES			
2/04 FIRST READING			
2/08 FISCAL NOTE RECEIVED			
2/11 HEARING			
2/11 FISCAL NOTE PRINTED			
2/18 REVISED FISCAL NOTE PRINTED			
2/19 COMMITTEE REPORT—BILL PASSED AS AMENDED			

2/20	2ND READING PASSED	48	1
2/21	3RD READING PASSED	44	4
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/14	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED AS AMENDED	92	0
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	92	5
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/18	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE DISSOLVED		
4/23	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	2
	HOUSE		
4/20	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE DISSOLVED		
4/23	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	7
4/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	88	11
4/30	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 805		

EFFECTIVE DATE: 7/01/91

SB 267 INTRODUCED BY TOWE, ET AL.

REQUIRE SECURITY AGENT TO OBTAIN PERMIT

2/04	INTRODUCED		
2/04	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/04	FIRST READING		
2/04	FISCAL NOTE REQUESTED		
2/11	FISCAL NOTE RECEIVED		
2/12	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/19	SPONSOR'S FISCAL NOTE PRINTED		
2/20	2ND READING PASSED AS AMENDED	27	22
2/21	3RD READING PASSED	30	20
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/11	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/20	2ND READING CONCURRED	63	36
3/21	3RD READING CONCURRED	62	37
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS NOT CONCURRED	47	0
3/28	CONFERENCE COMMITTEE APPOINTED		
4/10	CONFERENCE COMMITTEE REPORT NO. 1		

1 *Senate* BILL NO. *266*
2 INTRODUCED BY *Griffith, Bengtson*
3 BY REQUEST OF THE DEPARTMENT OF *Natural Resources*
4 NATURAL RESOURCES AND CONSERVATION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
7 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
8 PERMIT EXCEPTIONS; MAKING PERMISSIVE AND AUTHORIZING FEES
9 FOR THE SUBMISSION OF DEPARTMENT RECORDS OF WATER RIGHTS TO
10 A COUNTY CLERK AND RECORDER; REQUIRING THE VERIFICATION OF
11 COMPLETIONS OF PERMITS AND CHANGE APPROVALS; INCLUDING WATER
12 QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT OR CHANGE
13 AUTHORIZATION; AMENDING SECTIONS 85-2-102, 85-2-113,
14 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402, 85-2-424,
15 AND 85-2-501, MCA; REPEALING SECTION 85-2-317, MCA; AND
16 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
17 APPLICABILITY DATE."
18

19 STATEMENT OF INTENT

20 A statement of intent is required for this bill in order
21 to provide a guideline on the payment of fees. Rulemaking
22 authority is granted to the board of natural resources and
23 conservation to establish a fee schedule for payment of fees
24 to be paid to the department for its costs incurred in
25 providing water rights record information to a clerk and

1 recorder. It is the intent of the legislature that the rules
2 establish a reasonable fee schedule that approximates the
3 department's actual and necessary costs. A published fee
4 schedule will enable a clerk and recorder to know the cost
5 prior to seeking the information from the department.
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 **Section 1.** Section 85-2-102, MCA, is amended to read:

9 **"85-2-102. (Temporary) Definitions.** Unless the context
10 requires otherwise, in this chapter the following
11 definitions apply:

12 (1) "Appropriate" means to:

13 (a) divert, impound, or withdraw (including by stock
14 for stock water) a quantity of water;

15 (b) in the case of a public agency, to reserve water in
16 accordance with 85-2-316; or

17 (c) in the case of the department of fish, wildlife,
18 and parks, to lease water in accordance with 85-2-436.

19 (2) "Beneficial use", unless otherwise provided, means:

20 (a) a use of water for the benefit of the appropriator,
21 other persons, or the public, including but not limited to
22 agricultural (including stock water), domestic, fish and
23 wildlife, industrial, irrigation, mining, municipal, power,
24 and recreational uses;

25 (b) a use of water appropriated by the department for

1 the state water leasing program under 85-2-141 and of water
2 leased under a valid lease issued by the department under
3 85-2-141; and

4 (c) a use of water by the department of fish, wildlife,
5 and parks pursuant to a lease authorized under 85-2-436.

6 (3) "Board" means the board of natural resources and
7 conservation provided for in 2-15-3302.

8 (4) "Certificate" means a certificate of water right
9 issued by the department.

10 (5) "Change in appropriation right" means a change in
11 the place of diversion, the place of use, the purpose of
12 use, or the place of storage.

13 (6) "Commission" means the fish and game commission
14 provided for in 2-15-3402.

15 (7) "Declaration" means the declaration of an existing
16 right filed with the department under section 8, Chapter
17 452, Laws of 1973.

18 (8) "Department" means the department of natural
19 resources and conservation provided for in Title 2, chapter
20 15, part 33.

21 (9) "Existing right" means a right to the use of water
22 which would be protected under the law as it existed prior
23 to July 1, 1973.

24 (10) "Ground water" means any water that is beneath the
25 ~~land---surface---or---beneath---the---bed---of---a---stream,---lake,~~

1 ~~reservoir,---or---other---body---of---surface---water,---and---which---is---not~~
2 ~~a---part---of---that---surface---water~~ ground surface.

3 (11) "Permit" means the permit to appropriate issued by
4 the department under 85-2-301 through 85-2-303 and 85-2-306
5 through 85-2-314.

6 (12) "Person" means an individual, association,
7 partnership, corporation, state agency, political
8 subdivision, the United States or any agency thereof, or any
9 other entity.

10 (13) "Political subdivision" means any county,
11 incorporated city or town, public corporation, or district
12 created pursuant to state law or other public body of the
13 state empowered to appropriate water but not a private
14 corporation, association, or group.

15 (14) "Waste" means the unreasonable loss of water
16 through the design or negligent operation of an
17 appropriation or water distribution facility or the
18 application of water to anything but a beneficial use.

19 (15) "Water" means all water of the state, surface and
20 subsurface, regardless of its character or manner of
21 occurrence, including but not limited to geothermal water,
22 diffuse surface water, and sewage effluent.

23 (16) "Water division" means a drainage basin as defined
24 in 3-7-102.

25 (17) "Water judge" means a judge as provided for in

1 Title 3, chapter 7.

2 (18) "Water master" means a master as provided for in
3 Title 3, chapter 7.

4 (19) "Well" means any artificial opening or excavation
5 in the ground, however made, by which ground water is sought
6 or can be obtained or through which it flows under natural
7 pressures or is artificially withdrawn. (Terminates June 30,
8 1993--sec. 11, Ch. 658, L. 1989.)

9 85-2-102. (Effective July 1, 1993) Definitions. Unless
10 the context requires otherwise, in this chapter the
11 following definitions apply:

12 (1) "Appropriate" means to divert, impound, or withdraw
13 (including by stock for stock water) a quantity of water or,
14 in the case of a public agency, to reserve water in
15 accordance with 85-2-316.

16 (2) "Beneficial use", unless otherwise provided, means:

17 (a) a use of water for the benefit of the appropriator,
18 other persons, or the public, including but not limited to
19 agricultural (including stock water), domestic, fish and
20 wildlife, industrial, irrigation, mining, municipal, power,
21 and recreational uses; and

22 (b) a use of water appropriated by the department for
23 the state water leasing program under 85-2-141 and of water
24 leased under a valid lease issued by the department under
25 85-2-141.

1 (3) "Board" means the board of natural resources and
2 conservation provided for in 2-15-3302.

3 (4) "Certificate" means a certificate of water right
4 issued by the department.

5 (5) "Change in appropriation right" means a change in
6 the place of diversion, the place of use, the purpose of
7 use, or the place of storage.

8 (6) "Declaration" means the declaration of an existing
9 right filed with the department under section 8, Chapter
10 452, Laws of 1973.

11 (7) "Department" means the department of natural
12 resources and conservation provided for in Title 2, chapter
13 15, part 33.

14 (8) "Existing right" means a right to the use of water
15 which would be protected under the law as it existed prior
16 to July 1, 1973.

17 (9) "Ground water" means any water that is beneath the
18 ~~land--surface--or--beneath--the--bed--of--a--stream,--lake,~~
19 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
20 ~~a--part--of--that--surface--water~~ ground surface.

21 (10) "Permit" means the permit to appropriate issued by
22 the department under 85-2-301 through 85-2-303 and 85-2-306
23 through 85-2-314.

24 (11) "Person" means an individual, association,
25 partnership, corporation, state agency, political

subdivision, the United States or any agency thereof, or any other entity.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(15) "Water division" means a drainage basin as defined in 3-7-102.

(16) "Water judge" means a judge as provided for in Title 3, chapter 7.

(17) "Water master" means a master as provided for in Title 3, chapter 7.

(18) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and all change approvals. There shall be no fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the

maximum appropriation of the well is in excess of 100 gallons-a-minute the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. ~~(1)~~ When a final decree is entered, the water judge shall send a copy to the department. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

~~(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual~~

~~summary report of all certificates of water right issued by the department within the county."~~

Section 4. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

~~(2)(b)~~ The objection to an application for a permit must state the name and address of the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation, that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-402 are not met."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested,

1 but in no case may it issue a permit for more water than is
2 requested or than can be beneficially used without waste for
3 the purpose stated in the application. The department may
4 require modification of plans and specifications for the
5 appropriation or related diversion or construction. The
6 department may issue a permit subject to terms, conditions,
7 restrictions, and limitations it considers necessary to
8 satisfy the criteria listed in 85-2-311, and it may issue
9 temporary or seasonal permits. A permit shall be issued
10 subject to existing rights and any final determination of
11 those rights made under this chapter.

12 (2) The department shall specify in the permit or in
13 any authorized extension of time provided in subsection (3),
14 the time limits for commencement of the appropriation works,
15 completion of construction, and actual application of the
16 water to the proposed beneficial use. In fixing those time
17 limits, the department shall consider the cost and magnitude
18 of the project, the engineering and physical features to be
19 encountered, and, on projects designed for gradual
20 development and gradually increased use of water, the time
21 reasonably necessary for that gradual development and
22 increased use. The department shall issue the permit or
23 authorized extension of time subject to the terms,
24 conditions, restrictions, and limitations it considers
25 necessary to ensure that the work on the appropriation is

1 commenced, conducted, and completed and that the water is
2 actually applied in a timely manner to the beneficial use
3 specified in the permit.

4 (3) The department may, upon a showing of good cause,
5 extend time limits specified in the permit for commencement
6 of the appropriation works, completion of construction, and
7 actual application of the water to the proposed beneficial
8 use. All requests for extensions of time must be by
9 affidavit and must be filed with the department prior to the
10 expiration of the time limit specified in the permit or any
11 previously authorized extension of time. The department may
12 issue an order temporarily extending the time limit
13 specified in the permit for 120 days or until the department
14 has completed its action under this section, whichever is
15 greater. Upon receipt of a proper request for extension of
16 time, the department shall prepare a notice containing the
17 facts pertinent to the request for extension of time and
18 shall publish the notice in a newspaper of general
19 circulation in the area of the source. The department may
20 serve notice by first-class mail upon any public agency or
21 other person the department determines may be interested in
22 or affected by the request for extension of time. The
23 department shall hold a hearing on the request for extension
24 of time on its own motion or if requested by an interested
25 party. The department may grant the extension of time in the

1 absence of a hearing if no requests for a hearing are
 2 received and the extension of time is granted as requested,
 3 or the department may grant the extension of time in a
 4 modified form by following the process established in
 5 85-2-310(2). Subsequent extensions of time may be made in
 6 the same manner.

7 (4) The original of the permit shall be sent to the
 8 permittee, and a copy shall be kept in the office of the
 9 department in Helena.

10 ~~{5}--The--department--shall--provide--to--the--county--clerk~~
 11 ~~and--recorder--of--the--county--wherein--the--point--of--diversion--or~~
 12 ~~place--of--use--is--located--quarterly--reports--and--an--annual~~
 13 ~~summary--report--of--all--water--right--permits--certificates--and~~
 14 ~~change--approvals--issued--by--the--department--within--the~~
 15 ~~county--"~~

16 **Section 6.** Section 85-2-315, MCA, is amended to read:

17 "85-2-315. Certificate of water right. ~~{1}~~ Upon actual
 18 application of water to the proposed beneficial use within
 19 the time allowed, the permittee shall notify the department
 20 that the appropriation has been properly completed. The
 21 notification must contain a certified statement by a person
 22 with experience in the design, construction, or operation of
 23 appropriation works that the appropriation has been properly
 24 completed in substantial accordance with the terms and
 25 conditions of the permit. The department may then inspect

1 the appropriation, and if it determines that the
 2 appropriation has been completed in substantial accordance
 3 with the permit, it shall issue the permittee a certificate
 4 of water right. The original of the certificate shall be
 5 sent to the permittee, and a duplicate shall be kept in the
 6 office of the department in Helena.

7 ~~{2}--The--department--shall--provide--to--the--county--clerk~~
 8 ~~and--recorder--of--the--county--wherein--the--point--of--diversion--or~~
 9 ~~place--of--use--is--located--quarterly--reports--and--an--annual~~
 10 ~~summary--report--of--all--certificates--of--water--right--issued--by~~
 11 ~~the--department--within--the--county--"~~

12 **Section 7.** Section 85-2-402, MCA, is amended to read:

13 "85-2-402. (Temporary) Changes in appropriation rights.

14 (1) An appropriator may not make a change in an
 15 appropriation right except as permitted under this section
 16 and with the approval of the department or, if applicable,
 17 of the legislature.

18 (2) Except as provided in subsections (3) through (5),
 19 the department shall approve a change in appropriation right
 20 if the appropriator proves by substantial credible evidence
 21 that the following criteria are met:

22 (a) The proposed use will not adversely affect the
 23 water rights of other persons or other planned uses or
 24 developments for which a permit has been issued or for which
 25 water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the

state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the

rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)(9)~~ If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)(10)~~ The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(10)(11)~~ A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(11)(12)~~ A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

85-2-402. (Effective July 1, 1993) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence

1 that the following criteria are met:

2 (a) The proposed use will not adversely affect the
3 water rights of other persons or other planned uses or
4 developments for which a permit has been issued or for which
5 water has been reserved.

6 (b) The proposed means of diversion, construction, and
7 operation of the appropriation works are adequate.

8 (c) The proposed use of water is a beneficial use.

9 (d) The applicant has a possessory interest, or the
10 written consent of the person with the possessory interest,
11 in the property where the water is to be put to beneficial
12 use.

13 (3) The department may not approve a change in purpose
14 of use or place of use of an appropriation of 4,000 or more
15 acre-feet of water a year and 5.5 or more cubic feet per
16 second of water unless the appropriator proves by
17 substantial credible evidence that:

18 (a) the criteria in subsection (2) are met;

19 (b) the proposed change is a reasonable use. A finding
20 of reasonable use must be based on a consideration of:

21 (i) the existing demands on the state water supply, as
22 well as projected demands for water for future beneficial
23 purposes, including municipal water supplies, irrigation
24 systems, and minimum streamflows for the protection of
25 existing water rights and aquatic life;

1 (ii) the benefits to the applicant and the state;

2 (iii) the effects on the quantity and quality of water
3 for existing uses in the source of supply;

4 (iv) the availability and feasibility of using
5 low-quality water for the purpose for which application has
6 been made;

7 (v) the effects on private property rights by any
8 creation of or contribution to saline seep; and

9 (vi) the probable significant adverse environmental
10 impacts of the proposed use of water as determined by the
11 department pursuant to Title 75, chapter 1, or Title 75,
12 chapter 20.

13 (4) The department may not approve a change in purpose
14 of use or place of use for a diversion that results in 4,000
15 or more acre-feet of water a year and 5.5 or more cubic feet
16 per second of water being consumed unless:

17 (a) the applicant proves by clear and convincing
18 evidence and the department finds that the criteria in
19 subsections (2) and (3) are met; and

20 (b) the department then petitions the legislature and
21 the legislature affirms the decision of the department after
22 one or more public hearings.

23 (5) (a) The state of Montana has long recognized the
24 importance of conserving its public waters and the necessity
25 to maintain adequate water supplies for the state's water

requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of

subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the

proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)~~(9) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show

cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)~~(10) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(10)~~(11) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(11)~~(12) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 8. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) The transferor of a water right or his agent or representative shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer.

~~(4) The department shall send a reference copy of the water right transfer certificate to the office of the chief water judge and to the county clerk and recorder in the county in which the transfer occurred.~~

Section 9. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires

otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Ground water" means any fresh water that is beneath the land--surface--or--beneath--the--bed--of--a--stream, lake, reservoir, or other body of surface water and which is not a part of that surface water ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

NEW SECTION. **Section 10.** water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates issued or processed by the

department pursuant to Title 85, chapter 2, parts 3 and 4.

NEW SECTION. **Section 11.** Repealer. Section 85-2-317, MCA, is repealed.

NEW SECTION. **Section 12.** Codification instruction.
[Section 10] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 10].

NEW SECTION. **Section 13.** Retroactive applicability.
(1) [Sections 4 and 7, concerning water quality criteria] apply retroactively, within the meaning of 1-2-109, to all applications pending before the department of natural resources and conservation for which a permit or change authorization has not been issued on [the effective date of this act].

(2) [Sections 6 and 7, concerning certification by a professional engineer] apply retroactively, within the meaning of 1-2-109, to all permits for which a notice of completion has not been filed on and to change approvals issued after [the effective date of this act].

NEW SECTION. **Section 14.** Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0266, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the Montana water use laws; 2) defines the term "groundwater"; 3) clarifies permit exceptions; 4) makes permissive and authorizes fees for the submission of department records of water rights to county clerks and recorders; and 5) requires the verification of completions of permits and change approvals.

ASSUMPTIONS:

Several proposed water rights changes are merged into this one legislative bill. Some of the proposed changes have fiscal considerations that need to be evaluated. Assumptions pertaining to the fiscal impacts of these proposed changes are as follows:

1. Groundwater Definition: By amending the groundwater definition under 85-2-102 (10), MCA; and 85-2-102 (9), MCA (Temporary) to include any water that is beneath the ground surface, there is no fiscal impact. The amendment in the groundwater definition will not substantially increase or decrease the permit processing requirements or the certificate processing requirements.
2. Objections to Applications: Amending the requirements for filing an objection to a permit or change application under 85-2-308(1)(2), MCA, will not substantially increase or decrease the number of objections filed against new permit or change applications.
3. Privatize Verification: Requiring the owners of permitted or changed water use developments to provide for verification of completion of the works by a person with experience in the design, construction, or operation of appropriation works as proposed under Sections 85-2-315, MCA; 85-2-402 (8), MCA (Temporary); and 85-2-402 (8), MCA (Effective July 1, 1993), will require the DNRC to prepare rules and monitor the qualified experienced person's verification reports. Costs to draft administrative rules to implement this legislation will be \$2,000 for each year of the biennium. Operating costs to prepare new forms to process verification of completed water use developments will be \$500 for each year of the biennium.
4. Water Rights Records Reports: Eliminating the requirement for the DNRC to provide quarterly and/or annual reports as currently referenced under 85-2-236 (2), MCA; 85-2-312 (5), MCA; 85-2-315 (2), MCA; and 85-2-424 (4), MCA, will save approximately \$2,500 per year.
5. Groundwater Limitation (repeal of 85-2-317, MCA) has no significant impact. There have been less than five groundwater applications of this type since the law was passed in 1979.

FISCAL IMPACT:

see next page

 2-7-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/11/91

LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0266, as introduced

SB 266

FISCAL IMPACT:

No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The clerks and recorders will not have water rights records routinely available with this change in the statute. They may request reports of water rights records from the DNRC to serve their specific needs. If so, the cost of these reports will be borne by the respective clerks and recorders making the request.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is estimated that an average cost for verifying one completed permit or change by a qualified experienced person will be about \$400. Total verification expenses will cost the water users through private verifiers \$160,000 per year to complete verification of permits issued each year.

With private verification, the cost to the public water user will increase substantially, since the certified verification service will be borne directly by the water user. The state through DNRC will no longer provide verification service to water users for permits and changes issued after the effective date of this legislation. Currently, the DNRC does not have sufficient staff to maintain pace with the number of permits and changes that are issued annually. In fact, the backlog of approximately 3,000 unverified permits and changes is increasing by 200 per year.

There is an increasing trend of water users contacting water rights field offices for assistance regarding water rights data. The public is seeking and receiving more accurate and timely information from water rights field offices.

TECHNICAL NOTE:

The water quality criteria reference in the title could be deleted since there are no water quality provisions in the proposed bill.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0266, as introduced, revised

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the Montana water use laws; 2) defines the term "groundwater"; 3) clarifies permit exceptions; 4) makes permissive and authorizes fees for the submission of department records of water rights to county clerks and recorders; and 5) requires the verification of completions of permits and change approvals.

ASSUMPTIONS:

Several proposed water rights changes are merged into this one legislative bill. Some of the proposed changes have fiscal considerations that need to be evaluated. Assumptions pertaining to the fiscal impacts of these proposed changes are as follows:

1. Groundwater Definition: By amending the groundwater definition under 85-2-102 (10), MCA; and 85-2-102 (9), MCA (Temporary) to include any water that is beneath the ground surface, there is no fiscal impact. The amendment in the groundwater definition will not substantially increase or decrease the permit processing requirements or the certificate processing requirements.
2. Objections to Applications: Amending the requirements for filing an objection to a permit or change application under 85-2-308(1)(2), MCA, will not substantially increase or decrease the number of objections filed against new permit or change applications.
3. Privatize Verification: Requiring the owners of permitted or changed water use developments to provide for verification of completion of the works by a person with experience in the design, construction, or operation of appropriation works as proposed under Sections 85-2-315, MCA; 85-2-402 (8), MCA (Temporary); and 85-2-402 (8), MCA (Effective July 1, 1993), will require the DNRC to prepare rules and monitor the qualified experienced person's verification reports. Costs to draft administrative rules to implement this legislation will be \$2,000 for each year of the biennium. Operating costs to prepare new forms to process verification of completed water use developments will be \$500 for each year of the biennium.
4. Water Rights Records Reports: Eliminating the requirement for the DNRC to provide quarterly and/or annual reports as currently referenced under 85-2-236 (2), MCA; 85-2-312 (5), MCA; 85-2-315 (2), MCA; and 85-2-424 (4), MCA, will save approximately \$2,500 per year.
5. Groundwater Limitation (repeal of 85-2-317, MCA) has no significant impact. There have been less than five groundwater applications of this type since the law was passed in 1979.

FISCAL IMPACT:

none

 2-16-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 4/8/91
LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0266, as introduced, revised **SB216**

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The clerks and recorders will not have water rights records routinely available with this change in the statute. They may request reports of water rights records from the DNRC to serve their specific needs. If so, the cost of these reports will be borne by the respective clerks and recorders making the request.

There is an increasing trend of water users contacting water rights field offices for assistance regarding water rights data. The public is seeking and receiving more accurate and timely information from water rights field offices.

TECHNICAL NOTE:

The water quality criteria reference in the title could be deleted since there are no water quality provisions in the proposed bill.

CHAIRMAN--LAWRENCE STIMATZ
NORMAL SCHEDULE==> SITE: ROOM 405

DAYS: M,W,F

TIME: 3:00 P.M.

SECRETARY--ROBERTA OPEL

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0225	1/30	2/11		DO PASS		2/12
GAGE, DEL			REVISING ADMINISTRATION OF OIL AND GAS BOARD AND REVISING CIVIL PENALTY			
SB0245	2/01	2/08		ADVERSE RPT ADOPT		2/14
NATHE, DENNIS			EXEMPT HEATING FUEL TANKS FROM UNDERGROUND TANK REGULATION			
SB0247	2/01	2/08		ADVERSE RPT ADOPT		2/14
NATHE, DENNIS			EXEMPT PIPES FROM ABOVEGROUND HEATING FUEL TANKS FROM TANK REGULATIONS			
SB0253	2/01	2/13		PASS AS AMENDED		2/16
BENGTON, ESTHER			REVISING THE OPENCUT MINING ACT			
SB0265	2/04	2/11		PASS AS AMENDED		2/19
GROSFIELD, LORENTS			BENEFICIAL USE OF SALVAGED WATER			
SB0266	2/04	2/11		PASS AS AMENDED		2/19
GROSFIELD, LORENTS			MONTANA WATER USE ACT REVISIONS			
SB0268	2/04	2/20		PASS AS AMENDED		2/23
SVRCEK, PAUL			INCREASE USE OF RECYCLED GOODS BY PUBLIC AGENCIES-PURCHASE PREFERENCE			
SB0283	2/06	2/13		PASS AS AMENDED		2/14
DOHERTY, STEVE			REVISING THE ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION ACT			
SB0303	2/07	2/18		PASS AS AMENDED		2/21
WEEDING, CECIL			AUTHORIZING CONSIDERATION OF EFFECTS OF WATER USE ON WATER QUALITY			
SB0313	2/08	2/18		PASS AS AMENDED		2/21
GROSFIELD, LORENTS			WATER STORAGE POLICY ACT			
SB0314	2/08	2/18		PASS AS AMENDED		2/21
GROSFIELD, LORENTS			WATER RESERVATION AMENDMENTS			

Questions From Committee Members:

Senator Hockett asked why there was a 10 year period objection period in Ed Lord's amendment. Lord explained that time period was consistent with current leasing time spans.

Chairman Stimatz asked Lord if he had any technical data or books on return flow and the length of time return flow might take. Lord told the committee that every situation differed. In some cases it may take a month for water to travel underground and in other cases it may take two days.

(Ted Doney provided a presentation on water runoff and irrigational situations to the committee). The purpose of SB 265 is to make it clear that an appropriator can capture drainage and waste water (NOT the return flow) and put it back to use, Doney said.

Senator Keating asked for the DNRC's response to the presentation by Doney. Gary Fritz, DNRC, told the committee that he was glad the question about the amendments presented by Holly Franz were raised because they presented the fundamental policy decision that the legislature will have to make. These amendments would only allow an irrigator to salvage water that is otherwise irretrievable. This amount of water is typically a very, very small amount, said Fritz. By accepting those suggested amendments, Fritz said, you will be allowing irrigators the right to claim on a very small amount of salvaged water. DNRC has chosen to write this bill, Fritz said, to allow an irrigator to salvage not only the water irretrievably lost through evaporation or deep groundwater but also to salvage this return flow as long as others are not adversely impacted. (Fritz presented amendments with the same wordage as those proposed by Senator Grosfield).

Closing by Sponsor:

Senator Grosfield told the committee that the amendment offered by Franz and Doney "doesn't quite solve the problem because it doesn't allow those irrigators to lease that water." Grosfield added that he was "not enthusiastic" about the amendments offered by Stan Bradshaw.

HEARING ON SB 266Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, told the committee that SB 266 defines the term groundwater as any water beneath the ground's surface and also clarifies the recording of water rights with respect to county clerk's and recorder's. Grosfield distributed amendment's to the committee. (EXHIBIT #1).

Proponents' Testimony:

Gary Fritz, Department of Natural Resources and Conservation (DNRC) told the committee that the bill was at the request of the DNRC. Fritz stated that there had been "confusion" regarding the terms surface water and groundwater which SB 266 would help to clear. Another change within the bill in which the DNRC no longer providing counties with water rights information is based on recent experience with county clerk's who stated they did not know how to refer to the information. Fritz said people seem to be going to the water resource field offices rather than the county courthouse to receive this information.

Lorraine Gillies, Montana Farm Bureau Federation, appeared in support of SB 266. (EXHIBIT #3).

Jo Brunner, Montana Water Resources Association, supported SB 266.

Holly Franz, on behalf of Montana Power, told the committee there were parts of the bill she would support and parts she would not support. She was specifically concerned with wells put in along rivers that will eventually impact surface users.

Opponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, told the committee he could not support SB 266 in its entirety because of some drafting language. Bradshaw said he was concerned about the interests of a landowner (downstream) who did not have a water right but whose land could be adversely affected by a diversion that was put in dealing with a claimed water right.

Scott Snelson, Montana Wildlife Federation, stated the federation supported the majority of the bill but did have some concern about the definition of groundwater found within the bill.

Questions From Committee Members:

Senator Hockett inquired about the backlog of reviewing permit issuances to make sure certified copies of water use are being turned in. This bill would not require the permit holder for permits already issued to go back and file for certification, Fritz said. The DNRC would still have to work through the backlog, he added, but SB 266 would prevent any further backlog by requiring the permittee to certify how the water project was put into place.

Closing by Sponsor:

Senator Grosfield told the committee he felt SB 266 was straightforward and did not make any substantial changes in

Montana water law.

HEARING ON SB 225

Presentation and Opening Statement by Sponsor:

Senator Gage, District 5, presented SB 225 to the committee.

Proponents' Testimony:

Jim Nelson, member of the Board of Oil and Gas appeared in support of the bill. The bill will now require proper public notification for meetings of the board, Nelson said.

Doug Abelin, Northern Montana Oil and Gas, supported SB 225.

Opponents' Testimony:

There were no opponents to SB 225.

Questions From Committee Members:

Chairman Stimatz asked how often the Board of Oil and Gas would meet. Nelson stated the board met every six to seven weeks.

Closing by Sponsor:

Senator Gage on discussion of SB 225.

EXECUTIVE ACTION ON SB 225

Motion:

Motion by Vice Chairman Weeding that SB 225 DO PASS.

Discussion:

There was no discussion on SB 225.

Amendments, Discussion, and Votes:

Motion by Senator Keating to place SB 225 on the Consent Calendar.

ROLL CALL

Natural Resources COMMITTEE

DATE 2-11-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson			✓
Senator Bianchi	✓		
Senator Doherty			✓
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz	✓		

Each day attach to minutes.

COMMITTEE ON

Natural Resources

VISITORS' REGISTER

VISITORS' REGISTER		Check One	
NAME	REPRESENTING	BILL #	Support Oppo
Ed Lord	SELF	265	
Martin Barber	HPH	266	
Syl Garfield	self		
Mary Sampson	self	265	✓
Stan Backlund	MTU	266	
Steve Backlund	Montana Wildlife Fedn	265	✓
Ed Lord	MSGH & self	265	✓
Lorraine Gillies	Montana Farm Bureau	265	✓
Chuck Kein	SGCPA	265	✓
Nancy Epper			
Jim Nelson	Board of Cattle & Graz	225	✓
Jo Brunner	MAPA	265	
Holly Franz	MT Power Co.	266	✓ (with amendment)
Scott SNEZSON	MT Wildlife Federation	265	✓
Dora ABELIN	N. MONTANA CATTLEGRASS	225	✓

(Please leave prepared statement with Secretary)

Amendments to Senate Bill No. 266
First Reading Copy

1
2-11-91
SB 266

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 19, 1991

1. Page 10, line 23.

Following: line 22

Insert: "(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be ~~adversely~~ affected by the proposed appropriation."

Amendments to Senate Bill No. 266
First Reading CopyRequested by Senator Grosfield
For the Committee on Natural ResourcesPrepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8.
Following: line 7
Strike: "PERMIT EXCEPTIONS"
Insert: "OBJECTIONS"
2. Title, line 11 through line 13.
Following: "APPROVALS;" on line 11
Strike: "INCLUDING" on line 11 through "AUTHORIZATION;" on line 13
3. Title, line 16.
Following: "AN"
Strike: "IMMEDIATE"
Following: "AND"
Strike: "A RETROACTIVE"
Insert: "AN"
4. Page 10, line 23.
Following: line 22
Insert: "(3) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met."
5. Page 29, line 8.
Following: "Section 13."
Strike: "Retroactive applicability"
Insert: "Applicability"
6. Page 29, line 9 through line 15.
Following: line 8
Strike: "(1)" on line 9 through "(2)" on line 15
7. Page 29, line 16.
Following: line 15
Strike: "professional engineer"
Insert: "person with experience in the design, construction, or operation of appropriation works,"
8. Page 29, line 16 through line 17.
Following: "apply"
Strike: "retroactively" on line 16 through "1-2-109," on line 17
9. Page 29, line 17 through line 18.
Following: "permits" on line 17
Strike: "for" on line 17 through "on" on line 18
Following: "and" on line 18

Strike: "to"

10. Page 29, line 21.

Following: "effective"

Strike: "on passage and approval"

Insert: "July 1, 1991"

LC 916

SENATE BILL 266

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

February 13, 1991

By request of the Department of Natural Resources and Conservation:
A Bill for an act entitled:

"An Act revising the Montana Water Use Laws; defining the term "groundwater"; clarifying objections; making permissive and authorizing fees for the submission of department records of water rights to the county clerk and recorder; requiring the verification of completions of permits and change approvals; amending sections 85-2-102, 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402, 85-2-424, and 85-2-501, MCA; repealing section 85-2-317, MCA; providing a retroactive applicability and an effective date."

Purpose

The purpose of this bill is to improve the management of water resources in Montana by amending the water use laws in a variety of ways.

Background, Proposed Changes, and ImplementationDefining Groundwater

The proposed definition of "groundwater" is to clearly and precisely define groundwater and surface water for the purpose of administration of the Montana Water Use Act. If groundwater is hydrologically connected to surface water, then statutory and administrative requirements for surface water must apply. This requires the Department of Natural Resources and Conservation and/or the water user to determine whether the groundwater is hydrologically connected to surface water. The proposed definition would reduce the amount of technical and legal judgement necessary for administering and interpreting the Montana Water Use Act.

Water Rights Records

The proposed amendment is to eliminate the mandatory requirement of quarterly and annual reports of water right permits, certificates, and transfers to the county clerk and recorders as well as transfer reports to the chief water judge. The reports would instead be provided as requested and for a fee to cover the department costs.

The water rights reports currently provided to the 56 county clerk and recorders are seldom used by the public and are expensive to produce.

Although the Department of Natural Resources and Conservation has assisted each county in the use of the reports, most of the counties do not feel capable, nor do they have the time to spend helping the public research the water right records and reports. The counties often direct the water users to one of the Department's nine local water resources field offices or to the central office in Helena where the water right records appurtenant to a given area are located with individual detailed information and assistance available.

The chief water judge will continue to receive this information under an administrative rule adopted by the Montana Supreme Court.

Objections

Anytime amendments are made to the criteria for water right permits in 85-2-311 MCA, or water reservation in 85-2-316 MCA, or change authorizations in 85-2-402 MCA, corresponding changes must be subsequently made to 85-2-308 MCA describing the contents of an objection filed against the proposed application. Simply referencing 85-2-311, 316, and 402 MCA in 85-2-308 MCA would eliminate the requirement for duplicative wording each time the criteria is modified by the legislature.

Project Completion Notices

The Department of Natural Resources and Conservation does not have sufficient staff to reconcile water right permits, and change authorizations with actual development. This needs to be done and kept current so that the water right records are accurate. The current backlog this will take 10-15 years to complete.

To help resolve this problem, the proposed amendment would require the owner of the water use permit or change authorization to submit certified information concerning actual development. The information would have to be certified and completed by a person with experience in the design, construction, or operation of appropriation works.

Groundwater Appropriations

The Department proposed to repeal Section 85-2-317, MCA. It requires legislative approval to appropriate more than 3,000 acre-feet of groundwater for all uses except municipal and irrigation of cropland. The original purpose of Section 85-2-317, MCA was to prevent groundwater speculation and diversion of large quantities of groundwater out-of-state.

The reasonable use criteria outlined in Section 85-2-311, MCA, along with the "clear and convincing" burden of proof, provides clear legislative policy for protection for existing water rights against large and sometimes speculative new appropriations of water.

Fiscal Impact

None.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT NO. _____
DATE 2-11-91
BILL NO. SB 266

BILL # SB 266 ; TESTIMONY BY: Lorraine Gillies

DATE 2-11-91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, Members of the committee:

For the record, I am Lorraine Gillies, representing
Montana Farm Bureau.

We stand in support of SB 266. The clear & concise
definition of ground water is to the point and the bill
generally revises the original bill to be more precise
and understandable.

Thank you.

SIGNED: _____

EXECUTIVE ACTION ON SB 266

Motion:

Motion by Senator Keating that SB 266 DO PASS as amended.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

Motion by Senator Grosfield to move his amendments to SB 266.
(EXHIBIT #1). Motion carried.

Motion by Senator Keating to move second amendments to SB 266.
(EXHIBIT #2). Motion carried.

Recommendation and Vote:

Motion by Senator Keating that SB 266 DO PASS as amended carried
unanimously.

EXECUTIVE ACTION ON SB 346

Motion:

Motion by Senator Bianchi that SB 346 DO PASS.

Discussion:

There as no discussion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Bianchi that SB 346 DO PASS carried
unanimously.

ROLL CALL

Natural Resources COMMITTEE

DATE 2-18-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi			
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz	✓		

Each day attach to minutes.

Strike: "to"

10. Page 29, line 21.

Following: "effective"

Strike: "on passage and approval"

Insert: "July 1, 1991"

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 12, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 266 (first reading copy -- white), respectfully report that Senate Bill No. 266 be amended and or so amended do pass:

1. Title, line 8.

Following: line 7

Strike: "PERMIT EXCEPTIONS"

Insert: "OBJECTIONS"

2. Title, line 11 through line 13.

Following: "APPROVALS;" on line 11

Strike: "INCLUDING" on line 11 through "AUTHORIZATION;" on line 13

3. Title, line 16.

Following: "AN"

Strike: "IMMEDIATE"

Following: "AND"

Strike: "A RETROACTIVE"

Insert: "AN"

4. Page 10, line 23.

Following: line 22

Insert: "(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met."

5. Page 29, line 8.

Following: "Section 13."

Strike: "Retroactive applicability"

Insert: "Applicability"

6. Page 29, line 9 through line 15.

Following: line 8

Strike: "(1)" on line 9 through "(2)" on line 15

7. Page 29, line 16.

Following: line 15

Strike: "professional engineer"

Insert: "person with experience in the design, construction or

operation of appropriation works."

8. Page 29, line 16 through line 17.

Following: "apply"

Strike: "retroactively" on line 16 through "12:00," on line 17

9. Page 29, line 17 through line 18.

Following: "permits" on line 17

Strike: "for" on line 17 through "on" on line 18

Following: "and" on line 18

Strike: "to"

10. Page 29, line 21.

Following: "effective"

Strike: "on passage and approval"

Insert: "July 1, 1991"

Signed: *Lawrence G. Stimatz*

Lawrence G. Stimatz, Chairman

LB 2/17/91
Amd. Coord.

SR 2/17 11:05
Sec. of Senate

Amendments to Senate Bill No. 266
First Reading Copy

DATE

2-18-91

BILL NO.

SB 266

Requested by Senator Grosfield
For the Committee on Natural ResourcesPrepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8.
Following: line 7
Strike: "PERMIT EXCEPTIONS"
Insert: "OBJECTIONS"
2. Title, line 11 through line 13.
Following: "APPROVALS;" on line 11
Strike: "INCLUDING" on line 11 through "AUTHORIZATION;" on line 13
3. Title, line 16.
Following: "AN"
Strike: "IMMEDIATE"
Following: "AND"
Strike: "A RETROACTIVE"
Insert: "AN"
4. Page 10, line 23.
Following: line 22
Insert: "(3) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met."
5. Page 29, line 8.
Following: "Section 13."
Strike: "Retroactive applicability"
Insert: "Applicability"
6. Page 29, line 9 through line 15.
Following: line 8
Strike: "(1)" on line 9 through "(2)" on line 15
7. Page 29, line 16.
Following: line 15
Strike: "professional engineer"
Insert: "person with experience in the design, construction, or operation of appropriation works,"
8. Page 29, line 16 through line 17.
Following: "apply"
Strike: "retroactively" on line 16 through "1-2-109," on line 17
9. Page 29, line 17 through line 18.
Following: "permits" on line 17
Strike: "for" on line 17 through "on" on line 18
Following: "and" on line 18

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-18-91

AMENDMENTS TO SENATE BILL ~~NO. 66~~ SB 266

1. Page 10.

Following: line 22

Insert: "(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation."

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(H) NATURAL RESOURCES

PAGE NBR..... 130
 RUN TIME13:25
 RUN DATE.... 06/04/91

CHAIRMAN--BOB RANEY

NORMAL SCHEDULE==> SITE: ROOM 317

DAYS: TU,TH

TIME: 3:00 P.M.

SECRETARY-LISA FAIRMAN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0225	2/16	3/12		CONCUR		3/13
GAGE, DEL			REVISE LAWS FOR ADMINISTRATION OF OIL AND GAS BOARD AND REVISE CIVIL PENALTY			
SB0253	3/04	3/21		CONCUR		4/02
BENGTSON, ESTHER			REVISE THE OPENCUT MINING ACT			
SB0265	3/04	3/14		CONCUR		3/15
GROSFIELD, LORENTS			CLARIFY RIGHT TO BENEFICIALLY USE, SELL, OR LEASE SALVAGED WATER			
SB0266	3/04	3/14		CONCUR AS AMENDED		3/20
GROSFIELD, LORENTS			REVISE THE MONTANA WATER USE LAWS			
SB0268	3/04	3/19		TABLED ON 03/22		
SVRCEK, PAUL			INCREASE USE OF RECYCLED GOODS BY PUBLIC AGENCIES			
SB0283	2/18	3/08		CONCUR		3/13
DOHERTY, STEVE			REVISE THE ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION ACT			
SB0303	3/04	3/21		CONCUR		4/02
WEEDING, CECIL			AUTHORIZE THAT EFFECTS OF WATER USE ON WATER QUALITY BE CONSIDERED			
SB0313	3/04	3/14		CONCUR AS AMENDED		3/23
GROSFIELD, LORENTS			CLARIFY WATER STORAGE POLICY ACT			
SB0314	3/04	3/14		CONCUR		3/21
GROSFIELD, LORENTS			REVISE AND CLARIFY WATER RESERVATION PROCESS			
SB0346	3/04	3/19		CONCUR		3/20
HARP, JOHN			ESTABLISH SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE			
SB0355	3/04	3/22		TABLED ON 04/02		

REP. DOLEZAL asked how someone determines the amount of water saved. Mr. Fritz said the applicant must provide evidence of exactly how much water is being saved. If someone objects, the matter must go through the hearing process. There are formulas and scientific methods that can be used to estimate the amount of water that may be saved.

REP. REAM agreed to carry the bill on the floor. He asked to be recorded as a proponent of the bill.

Closing by Sponsor:

SEN. GROSFIELD said Mr. Spaeth is concerned there will be an increased burden on the water in a creek someplace. This bill does not intend to increase the burden. In the change process, it must be shown that no adverse affects will result. That is the key to the bill. If that can be demonstrated, everyone benefits. It provides incentive for improved efficiency in water use. In response to Mr. Lord's concern, the Department can approve a change subject to terms, conditions, restrictions, limitations or whatever is necessary to satisfy criteria beginning on Line 6 under subsection 7, Page 13 of the bill.

HEARING ON SB 266

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 266 was requested by DNRC and addresses clean-up. It changes the definition of groundwater and reporting requirements. It also provides for some notification. He reviewed the bill.

On Page 3, the current definition of groundwater makes it difficult to determine if it refers to groundwater or surface water. The Department spends a lot of time and expense trying to determine that. Department field offices have arrived at different conclusions about whether water is hydrologically connected to surface water. The proposed definition eliminates that problem and simplifies the definition.

On Pages 9-10, language regarding the quarterly report was struck. DNRC has been sending quarterly reports of all certificates of water right to county clerk and recorders. Counties aren't using the reports. Testimony in the Senate committee indicated some counties didn't know where the information was, and some clerk and recorders asked DNRC to stop sending the reports because they didn't know how to interpret them. A statement of intent at the end of the bill indicates clerk and recorders can request the reports from DNRC.

He reviewed changes on Pages 14 and 19, which indicate a person must notify DNRC when the water is finished being put to beneficial use. Current law requires DNRC to do an onsite inspection. The agency is 8,500 permits behind in its

verification process and estimates it will take 10-15 years at current staff levels to catch up on what is out there now. New language on Page 14 says the person must submit a certified statement of completion before a certificate of water right is granted.

Proponents' Testimony:

Gary Fritz, DNRC, said the definition for groundwater is clearer. It does not change the fact that there is a relationship between surface water and groundwater, except potentially for appropriations of less than 100,000 gallons per minute. Those applications do not go through the permitting process.

Language on Page 10 was removed, then added back in, to ensure people without water rights who have an interest in the water right will still be able to object to an application.

When people complete their project, it is rarely in accordance with the permit or authorization that was issued. DNRC has patterned language after what is done in Idaho, which has excellent experience in having water users certify how water use is occurring. This doesn't address the backlog referred to by SEN. GROSFIELD. The bill would apply only to permits issued and changes in the future.

There is a requirement in the statute that the Legislature approve all groundwater applications for more than 3,000 acre-feet. That part of the statute was passed in 1979 so that the Legislature would have to sign off on large groundwater uses. The state subsequently terminated all those groundwater applications because of their speculative nature. There have been only two or three large groundwater applications that have come to the Legislature since the bill was passed.

DNRC believes the water right process is sufficient to protect people against speculative water uses, without applications going through the Legislature. The Legislature requires people using groundwater to have a possessory interest in the place where groundwater is used. That probably is all the protection that is necessary.

Stan Bradshaw, Trout Unlimited, supported SB 266.

Gary Spaeth, Montana Water Users Association, supported SB 266.

Lorna Frank, Montana Farm Bureau, supported SB 266.

Opponents' Testimony:

Scott Snelson, Montana Wildlife Federation (MWF), said the Montana Wildlife Federation is concerned about the definition of groundwater and the question of wells. Inefficient irrigation systems often create an artificial aquifer that is tapped into by

well-water users. There are cases in which the aquifer has disappeared because an irrigator improved efficiency. If the definition of groundwater is changed, it appears those people will have a right to object to increases in irrigation efficiencies.

Questions from Committee Members:

REP. O'KEEFE asked what protects a water user's right to surface water if an upstream water user decides to tap into existing groundwater to build a well for irrigation. The language describing the interrelationship with surface water seems to be struck. Mr. Fritz said there may be a problem in the permitting process if the upstream user's well is less than 100 gallons per minute. There is always recourse if it is believed someone has adversely impacted the water supply. If use is under 100 gallons per minute, the certificate does not go through the permit process. In such a case, any adverse impact would have to be addressed in the courts.

REP. O'KEEFE said that is one problem. He asked how the change affects the downstream user's right to object to the upstream user's use of the water, and if the downstream user has to show the upstream user's activities will have an adverse impact. Mr. Fritz said SB 266 and the definition do not change the burden of proof or process if groundwater use is more than 100 gallons per minute. The upstream user would have to apply for a permit and the downstream user would still have the right to object to it.

REP. ELLISON asked for comment on Mr. Snelson's concern. Mr. Fritz said those type of questions arise sometimes. He doesn't see this legislation changing a person's opportunity to object or to try to make claims on the ability to get water based on something someone is doing upstream. He isn't sure this bill applies to that particular situation.

REP. RANEY referred to Section 11. He said that by repealing that section, the Legislature would be saying it is no longer opposed to coal slurry pipeline. SEN. GROSFIELD said it seems the Legislature a couple of sessions ago repealed the ban on using the water for coal slurry pipelines. REP. RANEY said the Legislature didn't. SEN. GROSFIELD said that while the bill would repeal the 3,000 acre-feet, public-interest criteria law has a limit of 4,000 acre-feet. Along with that limitation are a number of other provisions involving public interest. Any application for groundwater or surface water in excess of 4,000 acre-feet per year would have to meet certain criteria. REP. RANEY said that is right, but it would not have to garner approval of the Legislature.

Don MacIntyre, DNRC, said cases outside Montana have drawn attention to the fact that Montana's law regarding coal slurry pipelines may be unconstitutional. Rather than wait for the courts to decide the issue, the Legislature repealed the

prohibition on coal slurry and instituted tight water-permit restrictions. Some legislative approval exists.

Specific groundwater limitations weren't aimed so much at coal slurry pipelines as they were to prohibit people from filing appropriations on existing wells above the limits of individuals who had the wells. The fact is, that can't happen in Montana.

REP. RANEY asked if there is some other section of the law that says the Legislature must approve 4,000 acre-feet or more. Mr. MacIntyre said he would have to look at the statute to be sure. At the time the bill was passed in 1979, no public interest criteria existed. Criteria were developed in 1985.

Closing by Sponsor:

SEN. GROSFIELD said REP. O'KEEFE brought up the 100 gallon per minute limit threshold, which is addressed on Page 9 of the bill. The 100 gallon limit language was struck and a new line was inserted that is tighter. There was some discussion in the Senate committee about whether the threshold should be lowered. The most common figure heard was 35 gallons per minute. As the threshold is lowered, more applications will need to be processed. The Department's position has been that 100 gallons per minute is a reasonable threshold.

It's true that if an appropriator is experienced in design, construction and operation, the appropriator may be able to do his own certification. Often times, a local contractor is hired to do it. They end up with quite a bit of experience in this area. Often times, they are designed by the Soil Conservation Service. That person also would be able to sign off on it.

Mr. MacIntyre said the Legislature in 1985 decided against legislative approval of permitting. Changes require legislative approval. He read the statute.

REP. RANEY said he recalled concerns that California would want an aqueduct from Montana. The state wouldn't want that to happen. He asked Mr. MacIntyre if he thinks it is smart to repeal this section, when only public interest criteria could be used. It would certainly be in the public interest of Californians to get access to Montana's water. He asked if it is in the best interest of Montana and its citizens to cut the Legislature out of this major appropriation. Mr. MacIntyre said it obviously is a policy decision. The Legislature is setting specific criteria for the agency to follow. It becomes a philosophical question as to what more the Legislature would do, other than make a political decision when standards are being followed. The Legislature decides what those standards are. By doing so, the Legislature says whether the water can be exported. He doesn't believe the Legislature has to have this language.

SEN. GROSFIELD said the language Mr. MacIntyre mentioned

regarding the out-of-state transfer is on Page 17 of the bill under 5b, Line 14.

HEARING ON SB 313

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 313 is the governor's water storage bill, which arose from the Montana Water Plan process. An advisory council oversaw the plan's development. Four steering committees were established by the advisory council. Three of them addressed water storage. One looked at policy questions. Another looked at finance. The third looked at local, state and federal regulations. SB 313 is based on the state Water Plan. Nothing in the bill is inconsistent with the Water Storage Section of the plan. **EXHIBIT 10**

Water storage was identified as the most important issue to address in the state Water Plan process. He reviewed the bill, noting that the study of recreational user fees under Section 5 was the most controversial part of the bill to the Senate Finance Committee. These funds could be used only for water storage projects that provide recreational opportunities.

Storage financing is very expensive. There isn't enough money available to finance much. Section 8 would have increased the amount of coal severance money that goes into the water development fund. Section 9 was an attempt to get into the Resource Indemnity Trust (RIT).

He distributed a revenue chart, **EXHIBIT 11**, noting that the first bar graph represents the amount of money that would have been available to the program under the bill as it was introduced. The last graph shows what the Senate did to the bill. The middle graph is what he is asking the House committee to do through an amendment to reinstate some of the funding. He distributed proposed amendments, **EXHIBIT 12**, noting that they reinstate the increase in coal severance money. It would be increased from 1.25 percent to 2.5 percent. The amendments do not do anything with RIT. He noted the RIT idea would not have taken place until about 1996 because the trust is not projected to reach \$100 million until then.

Proponents' Testimony:

Karen Barclay, DNRC Director, said SEN. GROSFIELD did an excellent job describing the process, the bill's intent and implementation of the priorities. This is the third of four bills recommended through the state Water Plan process. The committee has heard drought management, salvage and storage bills. The final bill is a temporary transfer bill. She hopes the committee will look at these bills as a package because the recommendations were developed as a package for managing water resources in the state.

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 266
 DATE 3/14/91 SPONSOR(S) Sen. Enosfield - Water Use Act revisions
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Martin Barber	H P A	☒	☐
Ed J. Doney	Self	☒	☐
W. Baunne	M W R A	☒	☐
Donald Berg	self	☒	☐
Lerna Orank	Mt. Farm Bureau	☒	☐
Gay Heath	Mt. Water Users Coalition	☒	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

and Wanzenried were absent for voting.

Motion: REP. COHEN MOVED HB 731 DO PASS AS AMENDED.

Discussion: REP. GILBERT said he believes that going to mandatory regulation is violating the trust and does not give voluntary controls a chance to work. He will not support the bill. REP. COHEN said these are voluntary.

REP. RANEY asked if why is there a \$1,000 fine if it is voluntary. REP. GILBERT read from the bill that "it is the intent of the Legislature that the Department of State Lands adopt rules to implement management standards provided from Section 3 as enforceable standards for stream-side management zones."

Vote: Motion that HB 731 do pass as amended carried 13-3, with Reps. Nelson, Knox and Gilbert voting no. Reps. Ream and Wanzenried were absent for voting.

Motion: REP. GILBERT MOVED TO RECONSIDER ACTION ON HB 731 AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 266

Motion: REP. SOUTHWORTH MOVED SB 266 BE CONCURRED IN.

Motion: REP. RANEY moved to adopt amendments. EXHIBIT 22

Discussion: REP. RANEY said the law as passed had several applications. The one most important to him was protection against coal slurry pipelines. Those pipelines would not be put in place and use groundwater without legislative approval. Removing that section makes it possible to establish a coal slurry pipeline using groundwater without legislative approval. That is good reason to have the section in the law.

REP. GILBERT asked how much water is involved. REP. RANEY said 3,000 acre-feet. Anything under 3,000 acre-feet is insufficient to run a coal slurry pipeline. There are no other appropriations of groundwater of that size. It is an industrial restriction. Karen Barclay, DNRC Director, removed the section, without realizing the concerns. Ms. Barclay supports the proposed amendment.

Vote: Motion to adopt REP. RANEY's amendments carried unanimously. Reps. Ream and Wanzenried were absent for voting.

Motion: REP. SOUTHWORTH MOVED THAT SB 266 BE CONCURRED IN AS AMENDED. Motion carried unanimously. Reps. Ream and Wanzenried were absent for voting.

REP. RANEY suggested REP. CHARLES SWYSGOOD, HD 73 - Dillon, be notified that he will carry the bill.

Announcements:

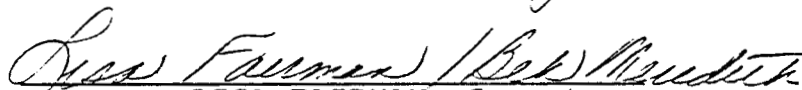
REP. COHEN said the House Property Tax Subcommittee was given a bill concerning air quality permits. The bill should have been referred to Natural Resources. He invited members to the subcommittee hearing.

ADJOURNMENT

Adjournment: 6:30 p.m.



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

EXHIBIT 15
DATE 3-19-91
~~SB~~ 266

Amendments to Senate Bill No. 266
Third Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Gail Kuntz
March 18, 1991

1. Title, lines 16 and 17.
Following: "MCA;" on line 16
Strike: "REPEALING SECTION 85-2-317, MCA;"
2. Page 29, lines 11 and 12.
Strike: section 11 in its entirety
Renumber: subsequent sections

HOUSE STANDING COMMITTEE REPORT

March 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 266 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Raney
Bob Raney, Chairman

Carried by: Rep. Grady

And, that such amendments read:

1. Title, lines 16 and 17.
Following: "MCA;" on line 16
Strike: "REPEALING SECTION 85-2-317, MCA;"
2. Page 29, lines 11 and 12.
Strike: section 11 in its entirety
Renumber: subsequent sections

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 266
Representative Grady

April 6, 1991
Page 2 of 2

April 6, 1991 9:27 am
Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 266 (third reading copy -- blue).

Signed: Roy E. Grady
Representative Grady

3. Page 29, line 16.
Following: "section"
Strike: "10"
Insert: "11"

4. Page 29, line 24.
Following: "and"
Strike: "7"
Insert: "8"

And, that such amendments to Senate Bill 266 read as follows:

1. Title, line 15.
Following: "85-2-315"
Insert: "85-2-317"

Insert: " Section 7. Section 85-2-317, MCA, is amended to read:
"85-2-317. Limitation on appropriation of ground water. (1)
After May 7, 1979, no application for a permit to appropriate
ground water in excess of 3,000 acre feet per year may be
granted, except pursuant to an act of the legislature permitting
the specific appropriation [the effective date of this act], the
department may not approve a permit to appropriate ground water
in excess of 3,000 acre feet per year unless:

(a) the applicant proves and the department finds that the
applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the
legislature affirms the decision of the department after one or
more public hearings.

(2) Subsection (1) applies to any permit to appropriate
ground water for which application has been made but which has
not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by
municipalities for municipal use or to appropriations for public
water supplies as defined in 75-6-102 or to appropriations for
the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity
that applies for a permit to appropriate ground water, singularly
or collectively, for the purpose of circumventing this section is
punishable by a fine not exceeding \$5,000."

2. Page 29, line 14.
Following: "Section"
Strike: "10"
Insert: "11"

ADOPT

REJECT

SB 266-1
730927CW.Hpd

HOUSE

SB 266

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 266
Representative O'Keefe

April 6, 1991 1:01 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 266 (third reading copy -- blue).

Signed: 
Representative O'Keefe

And, that such amendments to Senate Bill 266 read as follows:

1. Page 28, line 16.

Following: "~~fresh~~"

Insert: "fresh"

Strike: "that is"

2. Page 28, line 19.

Strike: "ground surface"

Insert: "land surface or beneath the bed of a stream, lake,
reservoir, or other body of surface water and which is not a
part of that surface water"

ADOPT

REJECT

SB 266
HOUSE

731300CW.HSF

1 SENATE BILL NO. 266
2 INTRODUCED BY GROSFIELD, BENGTSON, SWYSGOOD,
3 GRADY, THOFT
4 BY REQUEST OF THE DEPARTMENT OF
5 NATURAL RESOURCES AND CONSERVATION
6
7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
8 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
9 ~~PERMIT---EXCEPTIONS~~ OBJECTIONS; MAKING PERMISSIVE AND
10 AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF
11 WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE
12 VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS;
13 ~~INCLUDING-WATER-QUALITY-CRITERIA-IN-THE-ISSUANCE-OF-A-PERMIT~~
14 ~~OR---CHANGE---AUTHORIZATION~~; AMENDING SECTIONS 85-2-102,
15 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-317,
16 85-2-402, AND 85-2-424, ~~AND~~ 85-2-501, MCA; ~~REPEALING-SECTION~~
17 ~~85-2-317-MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
18 A-RETROACTIVE AN APPLICABILITY DATE."

19
20 STATEMENT OF INTENT

21 A statement of intent is required for this bill in order
22 to provide a guideline on the payment of fees. Rulemaking
23 authority is granted to the board of natural resources and
24 conservation to establish a fee schedule for payment of fees
25 to be paid to the department for its costs incurred in

1 providing water rights record information to a clerk and
2 recorder. It is the intent of the legislature that the rules
3 establish a reasonable fee schedule that approximates the
4 department's actual and necessary costs. A published fee
5 schedule will enable a clerk and recorder to know the cost
6 prior to seeking the information from the department.
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 85-2-102, MCA, is amended to read:

10 **"85-2-102. (Temporary) Definitions.** Unless the context
11 requires otherwise, in this chapter the following
12 definitions apply:

13 (1) "Appropriate" means to:

14 (a) divert, impound, or withdraw (including by stock
15 for stock water) a quantity of water;

16 (b) in the case of a public agency, to reserve water in
17 accordance with 85-2-316; or

18 (c) in the case of the department of fish, wildlife,
19 and parks, to lease water in accordance with 85-2-436.

20 (2) "Beneficial use", unless otherwise provided, means:

21 (a) a use of water for the benefit of the appropriator,
22 other persons, or the public, including but not limited to
23 agricultural (including stock water), domestic, fish and
24 wildlife, industrial, irrigation, mining, municipal, power,
25 and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish and game commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the

~~land---surface---or---beneath---the---bed---of---a---stream,---lake, reservoir,---or---other---body---of---surface---water,---and---which---is---not a-part-of-that-surface-water~~ ground surface.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Water division" means a drainage basin as defined in 3-7-102.

1 (17) "Water judge" means a judge as provided for in
2 Title 3, chapter 7.

3 (18) "Water master" means a master as provided for in
4 Title 3, chapter 7.

5 (19) "Well" means any artificial opening or excavation
6 in the ground, however made, by which ground water is sought
7 or can be obtained or through which it flows under natural
8 pressures or is artificially withdrawn. (Terminates June 30,
9 1993--sec. 11, Ch. 658, L. 1989.)

10 **85-2-102. (Effective July 1, 1993) Definitions.** Unless
11 the context requires otherwise, in this chapter the
12 following definitions apply:

13 (1) "Appropriate" means to divert, impound, or withdraw
14 (including by stock for stock water) a quantity of water or,
15 in the case of a public agency, to reserve water in
16 accordance with 85-2-316.

17 (2) "Beneficial use", unless otherwise provided, means:

18 (a) a use of water for the benefit of the appropriator,
19 other persons, or the public, including but not limited to
20 agricultural (including stock water), domestic, fish and
21 wildlife, industrial, irrigation, mining, municipal, power,
22 and recreational uses; and

23 (b) a use of water appropriated by the department for
24 the state water leasing program under 85-2-141 and of water
25 leased under a valid lease issued by the department under

1 85-2-141.

2 (3) "Board" means the board of natural resources and
3 conservation provided for in 2-15-3302.

4 (4) "Certificate" means a certificate of water right
5 issued by the department.

6 (5) "Change in appropriation right" means a change in
7 the place of diversion, the place of use, the purpose of
8 use, or the place of storage.

9 (6) "Declaration" means the declaration of an existing
10 right filed with the department under section 8, Chapter
11 452, Laws of 1973.

12 (7) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

15 (8) "Existing right" means a right to the use of water
16 which would be protected under the law as it existed prior
17 to July 1, 1973.

18 (9) "Ground water" means any water that is beneath the
19 ~~land--surface--or--beneath--the--bed--of--a--stream,--lake,~~
20 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
21 ~~a--part--of--that--surface--water~~ ground surface.

22 (10) "Permit" means the permit to appropriate issued by
23 the department under 85-2-301 through 85-2-303 and 85-2-306
24 through 85-2-314.

25 (11) "Person" means an individual, association,

1 partnership, corporation, state agency, political
2 subdivision, the United States or any agency thereof, or any
3 other entity.

4 (12) "Political subdivision" means any county,
5 incorporated city or town, public corporation, or district
6 created pursuant to state law or other public body of the
7 state empowered to appropriate water but not a private
8 corporation, association, or group.

9 (13) "Waste" means the unreasonable loss of water
10 through the design or negligent operation of an
11 appropriation or water distribution facility or the
12 application of water to anything but a beneficial use.

13 (14) "Water" means all water of the state, surface and
14 subsurface, regardless of its character or manner of
15 occurrence, including but not limited to geothermal water,
16 diffuse surface water, and sewage effluent.

17 (15) "Water division" means a drainage basin as defined
18 in 3-7-102.

19 (16) "Water judge" means a judge as provided for in
20 Title 3, chapter 7.

21 (17) "Water master" means a master as provided for in
22 Title 3, chapter 7.

23 (18) "Well" means any artificial opening or excavation
24 in the ground, however made, by which ground water is sought
25 or can be obtained or through which it flows under natural

1 pressures or is artificially withdrawn."

2 **Section 2.** Section 85-2-113, MCA, is amended to read:

3 **"85-2-113. Board powers and duties.** (1) The board may
4 prescribe fees or service charges for any public service
5 rendered by the department under this chapter, including
6 fees for the filing of applications or for the issuance of
7 permits and certificates, for rulemaking hearings under
8 85-2-319, for administrative hearings conducted under this
9 chapter, for investigations concerning permit revocation,
10 for field verification of issued and completed permits, and
11 all change approvals. There shall be no fees for any action
12 taken by the department at the request of the water judge or
13 for the issuance of certificates of existing rights.

14 (2) The board may adopt rules necessary to implement
15 and carry out the purposes and provisions of this chapter.
16 These rules may include but are not limited to rules to:

17 (a) govern the issuance and terms of interim permits
18 authorizing an applicant for a regular permit under this
19 chapter to begin appropriating water immediately, pending
20 final approval or denial by the department of the
21 application for a regular permit;

22 (b) require the owner or operator of appropriation
23 facilities to install and maintain suitable controlling and
24 measuring devices, except that the board may not require a
25 meter on a water well outside of a controlled ground water

1 area or proposed controlled ground water area unless the
2 maximum appropriation of the well is in excess of ~~100~~
3 ~~gallons-a-minute~~ the limitation contained in 85-2-306(1);

4 (c) require the owner or operator of appropriation
5 facilities to report to the department the readings of
6 measuring devices at reasonable intervals and to file
7 reports on appropriations; and

8 (d) regulate the construction, use, and sealing of
9 wells to prevent the waste, contamination, or pollution of
10 ground water.

11 (3) The board shall adopt rules providing for and
12 governing temporary emergency appropriations, without prior
13 application for a permit, necessary to protect lives or
14 property."

15 **Section 3.** Section 85-2-236, MCA, is amended to read:

16 "85-2-236. Certificate of water right. ~~{1}~~ When a final
17 decree is entered, the water judge shall send a copy to the
18 department. Except as provided in 85-2-306, the department
19 shall on the basis of the final decree issue a certificate
20 of water right to each person decreed an existing right. The
21 original of the certificate shall be sent to the person to
22 whom the right is decreed. The department shall keep a copy
23 of the certificate in its office in Helena.

24 ~~{2}--The department shall provide to--the--county--clerk~~
25 ~~and-recorder-of-the-county-wherein-the-point-of-diversion-or~~

1 ~~place--of--use--is--located--quarterly-reports-and-an-annual~~
2 ~~summary-report-of-all-certificates-of-water-right-issued--by~~
3 ~~the-department-within-the-county."~~

4 **Section 4.** Section 85-2-308, MCA, is amended to read:

5 "85-2-308. Objections. (1) (a) An objection to an
6 application for a permit must be filed by the date specified
7 by the department under 85-2-307(2).

8 ~~{2}~~(b) The objection to an application for a permit
9 must state the name and address of the objector and facts
10 tending to show that ~~there-are-no-unappropriated--waters--in~~
11 ~~the---proposed---source,---that---the---proposed---means--of~~
12 ~~appropriation--are--inadequate,--that--the--property,--water~~
13 ~~rights,--or-interests-of--the--objector--would--be--adversely~~
14 ~~affected--by--the--proposed-appropriation,--that--the-proposed~~
15 ~~use-of-water-is-not-a-beneficial-use,--or--that--the--proposed~~
16 ~~use--will--interfere-unreasonably-with-other-planned-uses-or~~
17 ~~developments-for-which-a-permit-has-been-issued-or-for-which~~
18 ~~water-has-been-reserved~~ one or more of the criteria in
19 85-2-311 are not met.

20 (2) For an application for a change in appropriation
21 rights, the objection must state the name and address of the
22 objector and facts tending to show that one or more of the
23 criteria in 85-2-402 are not met.

24 (3) A PERSON HAS STANDING TO FILE AN OBJECTION UNDER
25 THIS SECTION IF THE PROPERTY, WATER RIGHTS, OR INTERESTS OF

1 THE OBJECTOR WOULD BE ADVERSELY AFFECTED BY THE PROPOSED
 2 APPROPRIATION.

3 (4) FOR AN APPLICATION FOR A RESERVATION OF WATER, THE
 4 OBJECTION MUST STATE THE NAME AND ADDRESS OF THE OBJECTOR
 5 AND FACTS TENDING TO SHOW THAT ONE OR MORE OF THE CRITERIA
 6 IN 85-2-316 ARE NOT MET."

7 **Section 5.** Section 85-2-312, MCA, is amended to read:

8 **"85-2-312. Terms of permit.** (1) The department may
 9 issue a permit for less than the amount of water requested,
 10 but in no case may it issue a permit for more water than is
 11 requested or than can be beneficially used without waste for
 12 the purpose stated in the application. The department may
 13 require modification of plans and specifications for the
 14 appropriation or related diversion or construction. The
 15 department may issue a permit subject to terms, conditions,
 16 restrictions, and limitations it considers necessary to
 17 satisfy the criteria listed in 85-2-311, and it may issue
 18 temporary or seasonal permits. A permit shall be issued
 19 subject to existing rights and any final determination of
 20 those rights made under this chapter.

21 (2) The department shall specify in the permit or in
 22 any authorized extension of time provided in subsection (3),
 23 the time limits for commencement of the appropriation works,
 24 completion of construction, and actual application of the
 25 water to the proposed beneficial use. In fixing those time

1 limits, the department shall consider the cost and magnitude
 2 of the project, the engineering and physical features to be
 3 encountered, and, on projects designed for gradual
 4 development and gradually increased use of water, the time
 5 reasonably necessary for that gradual development and
 6 increased use. The department shall issue the permit or
 7 authorized extension of time subject to the terms,
 8 conditions, restrictions, and limitations it considers
 9 necessary to ensure that the work on the appropriation is
 10 commenced, conducted, and completed and that the water is
 11 actually applied in a timely manner to the beneficial use
 12 specified in the permit.

13 (3) The department may, upon a showing of good cause,
 14 extend time limits specified in the permit for commencement
 15 of the appropriation works, completion of construction, and
 16 actual application of the water to the proposed beneficial
 17 use. All requests for extensions of time must be by
 18 affidavit and must be filed with the department prior to the
 19 expiration of the time limit specified in the permit or any
 20 previously authorized extension of time. The department may
 21 issue an order temporarily extending the time limit
 22 specified in the permit for 120 days or until the department
 23 has completed its action under this section, whichever is
 24 greater. Upon receipt of a proper request for extension of
 25 time, the department shall prepare a notice containing the

facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. The department may grant the extension of time in the absence of a hearing if no requests for a hearing are received and the extension of time is granted as requested, or the department may grant the extension of time in a modified form by following the process established in 85-2-310(2). Subsequent extensions of time may be made in the same manner.

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

~~(5)--The-department-shall-provide-to--the--county--clerk and-recorder-of-the-county-wherein-the-point-of-diversion-or place--of--use--is--located--quarterly-reports-and-an-annual summary-report-of-all-water-right-permits, certificates, and change--approvals--issued--by--the--department--within--the county."~~

Section 6. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the permit. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the permittee, and a duplicate shall be kept in the office of the department in Helena.

~~(2)--The--department--shall--provide-to-the-county-clerk and-recorder-of-the-county-wherein-the-point-of-diversion-or place-of-use-is-located--quarterly--reports--and--an--annual summary--report-of-all-certificates-of-water-right-issued-by the-department-within-the-county."~~

SECTION 7. SECTION 85-2-317, MCA, IS AMENDED TO READ:

"85-2-317. Limitation on appropriation of ground water. (1) After May 7, 1979, no application for a permit to appropriate ground water in excess of 3,000 acre-feet per year may be granted, except pursuant to an act of the

1 ~~legislature---permitting--the--specific--appropriation~~ [the
2 ~~effective date of this act~~], the department may not approve
3 ~~a permit to appropriate ground water in excess of 3,000 acre~~
4 ~~feet per year unless:~~

5 ~~(a) the applicant proves and the department finds that~~
6 ~~the applicable criteria in 85-2-311 are met; and~~

7 ~~(b) the department then petitions the legislature and~~
8 ~~the legislature affirms the decision of the department after~~
9 ~~one or more public hearings.~~

10 (2) Subsection (1) applies to any permit to appropriate
11 ground water for which application has been made but which
12 has not been granted as of May 7, 1979.

13 (3) This section does not apply to appropriations by
14 municipalities for municipal use or to appropriations for
15 public water supplies as defined in 75-6-102 or to
16 appropriations for the irrigation of cropland owned and
17 operated by the applicant.

18 (4) Any person, association, corporation, or other
19 entity that applies for a permit to appropriate ground
20 water, singularly or collectively, for the purpose of
21 circumventing this section is punishable by a fine not
22 exceeding \$5,000."

23 **Section 8.** Section 85-2-402, MCA, is amended to read:

24 "85-2-402. (Temporary) Changes in appropriation rights.

25 (1) An appropriator may not make a change in an

1 appropriation right except as permitted under this section
2 and with the approval of the department or, if applicable,
3 of the legislature.

4 (2) Except as provided in subsections (3) through (5),
5 the department shall approve a change in appropriation right
6 if the appropriator proves by substantial credible evidence
7 that the following criteria are met:

8 (a) The proposed use will not adversely affect the
9 water rights of other persons or other planned uses or
10 developments for which a permit has been issued or for which
11 water has been reserved.

12 (b) Except for a lease authorization pursuant to
13 85-2-436 that does not require appropriation works, the
14 proposed means of diversion, construction, and operation of
15 the appropriation works are adequate.

16 (c) The proposed use of water is a beneficial use.

17 (d) The applicant has a possessory interest, or the
18 written consent of the person with the possessory interest,
19 in the property where the water is to be put to beneficial
20 use.

21 (3) The department may not approve a change in purpose
22 of use or place of use of an appropriation of 4,000 or more
23 acre-feet of water a year and 5.5 or more cubic feet per
24 second of water unless the appropriator proves by
25 substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing

evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of

1 subsection (2) or (3) are met;

2 (ii) the proposed out-of-state use of water is not
3 contrary to water conservation in Montana; and

4 (iii) the proposed out-of-state use of water is not
5 otherwise detrimental to the public welfare of the citizens
6 of Montana.

7 (c) In determining whether the appropriator has proved
8 by clear and convincing evidence that the requirements of
9 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
10 department and, if applicable, the legislature shall
11 consider the following factors:

12 (i) whether there are present or projected water
13 shortages within the state of Montana;

14 (ii) whether the water that is the subject of the
15 proposed change in appropriation might feasibly be
16 transported to alleviate water shortages within the state of
17 Montana;

18 (iii) the supply and sources of water available to the
19 applicant in the state where the applicant intends to use
20 the water; and

21 (iv) the demands placed on the applicant's supply in the
22 state where the applicant intends to use the water.

23 (d) When applying for a change in appropriation right
24 to withdraw and transport water for use outside the state,
25 the applicant shall submit to and comply with the laws of

1 the state of Montana governing the appropriation and use of
2 water.

3 (6) For any application for a change in appropriation
4 right involving 4,000 or more acre-feet of water a year and
5 5.5 or more cubic feet per second of water, the department
6 shall give notice of the proposed change in accordance with
7 85-2-307 and shall hold one or more hearings in accordance
8 with 85-2-309 prior to its approval or denial of the
9 proposed change. The department shall provide notice and may
10 hold one or more hearings upon any other proposed change if
11 it determines that a change might adversely affect the
12 rights of other persons.

13 (7) The department or the legislature, if applicable,
14 may approve a change subject to terms, conditions,
15 restrictions, and limitations as it considers necessary to
16 satisfy the criteria of this section, including limitations
17 on the time for completion of the change. The department may
18 extend time limits specified in the change approval under
19 the applicable criteria and procedures of 85-2-312(3).

20 (8) Upon actual application of water to the proposed
21 beneficial use within the time allowed, the appropriator
22 shall notify the department that the appropriation has been
23 properly completed. The notification must contain a
24 certified statement by a person with experience in the
25 design, construction, or operation of appropriation works

1 that the appropriation has been properly completed in
 2 substantial accordance with the terms and conditions of the
 3 change approval.

4 ~~(8)~~(9) If a change is not completed as approved by the
 5 department or legislature or if the terms, conditions,
 6 restrictions, and limitations of the change approval are not
 7 complied with, the department may, after notice and
 8 opportunity for hearing, require the appropriator to show
 9 cause why the change approval should not be modified or
 10 revoked. If the appropriator fails to show sufficient cause,
 11 the department may modify or revoke the change approval.

12 ~~(9)~~(10) The original of a change approval issued by the
 13 department must be sent to the applicant, and a duplicate
 14 must be kept in the office of the department in Helena.

15 ~~(10)~~(11) A person holding an issued permit or change
 16 approval that has not been perfected may change the place of
 17 diversion, place of use, purpose of use, or place of storage
 18 by filing an application for change pursuant to this
 19 section.

20 ~~(11)~~(12) A change in appropriation right contrary to the
 21 provisions of this section is invalid. An officer, agent,
 22 agency, or employee of the state may not knowingly permit,
 23 aid, or assist in any manner an unauthorized change in
 24 appropriation right. A person or corporation may not,
 25 directly or indirectly, personally or through an agent,

1 officer, or employee, attempt to change an appropriation
 2 right except in accordance with this section. (Terminates
 3 June 30, 1993--sec. 11, Ch. 658, L. 1989.)

4 **85-2-402. (Effective July 1, 1993) Changes in**
 5 **appropriation rights.** (1) An appropriator may not make a
 6 change in an appropriation right except as permitted under
 7 this section and with the approval of the department or, if
 8 applicable, of the legislature.

9 (2) Except as provided in subsections (3) through (5),
 10 the department shall approve a change in appropriation right
 11 if the appropriator proves by substantial credible evidence
 12 that the following criteria are met:

13 (a) The proposed use will not adversely affect the
 14 water rights of other persons or other planned uses or
 15 developments for which a permit has been issued or for which
 16 water has been reserved.

17 (b) The proposed means of diversion, construction, and
 18 operation of the appropriation works are adequate.

19 (c) The proposed use of water is a beneficial use.

20 (d) The applicant has a possessory interest, or the
 21 written consent of the person with the possessory interest,
 22 in the property where the water is to be put to beneficial
 23 use.

24 (3) The department may not approve a change in purpose
 25 of use or place of use of an appropriation of 4,000 or more

1 acre-feet of water a year and 5.5 or more cubic feet per
2 second of water unless the appropriator proves by
3 substantial credible evidence that:

4 (a) the criteria in subsection (2) are met;

5 (b) the proposed change is a reasonable use. A finding
6 of reasonable use must be based on a consideration of:

7 (i) the existing demands on the state water supply, as
8 well as projected demands for water for future beneficial
9 purposes, including municipal water supplies, irrigation
10 systems, and minimum streamflows for the protection of
11 existing water rights and aquatic life;

12 (ii) the benefits to the applicant and the state;

13 (iii) the effects on the quantity and quality of water
14 for existing uses in the source of supply;

15 (iv) the availability and feasibility of using
16 low-quality water for the purpose for which application has
17 been made;

18 (v) the effects on private property rights by any
19 creation of or contribution to saline seep; and

20 (vi) the probable significant adverse environmental
21 impacts of the proposed use of water as determined by the
22 department pursuant to Title 75, chapter 1, or Title 75,
23 chapter 20.

24 (4) The department may not approve a change in purpose
25 of use or place of use for a diversion that results in 4,000

1 or more acre-feet of water a year and 5.5 or more cubic feet
2 per second of water being consumed unless:

3 (a) the applicant proves by clear and convincing
4 evidence and the department finds that the criteria in
5 subsections (2) and (3) are met; and

6 (b) the department then petitions the legislature and
7 the legislature affirms the decision of the department after
8 one or more public hearings.

9 (5) (a) The state of Montana has long recognized the
10 importance of conserving its public waters and the necessity
11 to maintain adequate water supplies for the state's water
12 requirements, including requirements for reserved water
13 rights held by the United States for federal reserved lands
14 and in trust for the various Indian tribes within the
15 state's boundaries. Although the state of Montana also
16 recognizes that, under appropriate conditions, the
17 out-of-state transportation and use of its public waters are
18 not in conflict with the public welfare of its citizens or
19 the conservation of its waters, the following criteria must
20 be met before out-of-state use may occur:

21 (b) The department and, if applicable, the legislature
22 may not approve a change in appropriation right for the
23 withdrawal and transportation of appropriated water for use
24 outside the state unless the appropriator proves by clear
25 and convincing evidence and, if applicable, the legislature

1 approves after one or more public hearings that:

2 (i) depending on the volume of water diverted or
3 consumed, the applicable criteria and procedures of
4 subsection (2) or (3) are met;

5 (ii) the proposed out-of-state use of water is not
6 contrary to water conservation in Montana; and

7 (iii) the proposed out-of-state use of water is not
8 otherwise detrimental to the public welfare of the citizens
9 of Montana.

10 (c) In determining whether the appropriator has proved
11 by clear and convincing evidence that the requirements of
12 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
13 department and, if applicable, the legislature shall
14 consider the following factors:

15 (i) whether there are present or projected water
16 shortages within the state of Montana;

17 (ii) whether the water that is the subject of the
18 proposed change in appropriation might feasibly be
19 transported to alleviate water shortages within the state of
20 Montana;

21 (iii) the supply and sources of water available to the
22 applicant in the state where the applicant intends to use
23 the water; and

24 (iv) the demands placed on the applicant's supply in the
25 state where the applicant intends to use the water.

1 (d) When applying for a change in appropriation right
2 to withdraw and transport water for use outside the state,
3 the applicant shall submit to and comply with the laws of
4 the state of Montana governing the appropriation and use of
5 water.

6 (6) For any application for a change in appropriation
7 right involving 4,000 or more acre-feet of water a year and
8 5.5 or more cubic feet per second of water, the department
9 shall give notice of the proposed change in accordance with
10 85-2-307 and shall hold one or more hearings in accordance
11 with 85-2-309 prior to its approval or denial of the
12 proposed change. The department shall provide notice and may
13 hold one or more hearings upon any other proposed change if
14 it determines that such a change might adversely affect the
15 rights of other persons.

16 (7) The department or the legislature, if applicable,
17 may approve a change subject to such terms, conditions,
18 restrictions, and limitations as it considers necessary to
19 satisfy the criteria of this section, including limitations
20 on the time for completion of the change. The department may
21 extend time limits specified in the change approval under
22 the applicable criteria and procedures of 85-2-312(3).

23 (8) Upon actual application of water to the proposed
24 beneficial use within the time allowed, the appropriator
25 shall notify the department that the appropriation has been

properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)~~(9) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)~~(10) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(10)~~(11) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(11)~~(12) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid,

or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 9. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) The transferor of a water right or his agent or representative shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must

1 include all transfers for the month immediately preceding
2 the date of submittal to the department. The list must
3 include the names and addresses of all parties to the
4 transfer and a legal description of the land subject to the
5 transfer.

6 {4}--The--department--shall--send--a--reference--copy--of--the
7 water--right--transfer--certificate--to--the--office--of--the--chief
8 water--judge--and--to--the--county--clerk--and--recorder--in--the
9 county--in--which--the--transfer--occurred;"

10 Section-9--Section-85-2-501-MEA-is-amended-to-read:

11 "85-2-501--Definitions--Unless--the--context--requires
12 otherwise,--in--this--part--the--following--definitions--apply:

13 {1}--"Aquifer"--means--any--underground--geological
14 structure--or--formation--which--is--capable--of--yielding--water--or
15 is--capable--of--recharge;

16 {2}--"Bureau"--means--the--Montana--state--bureau--of--mines
17 and--geology--provided--for--in--20-25-211;

18 {3}--"Ground-water"--means--any--fresh FRESH-water-that--is
19 beneath--the--land--surface--or--beneath--the--bed--of--a--stream;
20 lake,--reservoir,--or--other--body--of--surface--water--and--which--is
21 not--a--part--of--that--surface--water ground-surface LAND-SURFACE
22 OR-BENEATH-THE-BED-OF-A-STREAM, LAKE,--RESERVOIR,--OR--OTHER
23 BODY--OF--SURFACE--WATER--AND--WHICH--IS--NOT--A--PART--OF--THAT
24 SURFACE-WATER;

25 {4}--"Ground-water-area"--means--an--area--which,--as--nearly

1 as--known--facts--permit,--may--be--designated--so--as--to--enclose--a
2 single--and--distinct--body--of--ground--water,--which--shall--be
3 described--horizontally--by--surface--description--in--all--cases
4 and--which--may--be--limited--vertically--by--describing--known
5 geological--formations--should--conditions--dictate--this--to--be
6 desirable;"

7 NEW SECTION. **Section 10.** Water right records for
8 filing with local clerk and recorder. Upon payment of a fee
9 established pursuant to 85-2-113, a county clerk and
10 recorder of the county where the point of diversion or place
11 of use is located or in which a transfer of water right
12 occurred may require the department to provide a report of
13 all water permits, certificates, change approvals, or water
14 right transfer certificates issued or processed by the
15 department pursuant to Title 85, chapter 2, parts 3 and 4.

16 NEW-SECTION:--Section-11--Repeater,--Section--85-2-317;
17 MEA-is-repeated;

18 NEW SECTION. **Section 11.** Codification instruction.
19 [Section 10 11 10] is intended to be codified as an integral
20 part of Title 85, chapter 2, and the provisions of Title 85,
21 chapter 2, apply to [section 10 11 10].

22 NEW SECTION. **Section 12.** "Retroactive" applicability
23 APPLICABILITY. {1}--{Sections--4--and--7,--concerning--water
24 quality--criteria}--apply--retroactively,--within--the--meaning--of
25 1-2-109,--to--all--applications--pending--before--the--department

1 of-natural-resources-and-conservation-for-which-a-permit--or
2 change--authorization-has-not-been-issued-on--{the-effective
3 date-of-this-act}.

4 {2} [Sections 6 and 7 8 7], concerning certification by
5 a professional--engineer} PERSON WITH EXPERIENCE IN THE
6 DESIGN, CONSTRUCTION, OR OPERATION OF APPROPRIATION WORKS,
7 apply retroactively,-within-the-meaning-of-1-2-109, to all
8 permits for-which-a-notice-of-completion-has-not-been-filed
9 on and to change approvals issued after {the effective date
10 of this act}.

11 NEW SECTION. Section 13. Effective date. {This act} is
12 effective on-passage-and-approval JULY 1, 1991.

-End-

Free Conference Committee
on Senate Bill No. 266
Report No. 1, April 24, 1991

April 24, 1991
Page 2 of 4

Page 1 of 4

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 266, met and considered:

1. House Committee of the Whole Amendment to the third reading copy, dated April 6, 1991, 1:01 p.m., sponsored by O'Keefe.

We recommend that Senate Bill No. 266, reference copy, be amended as indicated in the INSTRUCTIONS.

INSTRUCTIONS:

1. Title, line 15.
Following: "85-2-236,"
Insert: "85-2-306"

2. Title, line 16.
Following: "85-2-402"
Strike: "AND"
Following: "85-2-501"
Insert: "AND 85-2-501"

3. Page 10.
Following: line 3
Insert: "Section 4. Section 85-2-306, MCA, is amended to read:
"85-2-306. Exceptions to permit requirements. (1)

Groundwater may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the groundwater development works or, if another person has rights in the groundwater development works, the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 35 gallons per minute or less not to exceed 10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a

form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refilled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 35 gallons per minute or less not to exceed 10 acre feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if

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the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Renumber subsequent sections

4. Page 30.

Following: line 6

Insert: "Section 10. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Ground water" means any fresh water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water

ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

Renumber: subsequent sections

and we recommend that Senate Bill No. 266 (reference copy - salmon) be amended as follows:

And that this Free Conference Committee report be adopted.

For the Senate:

Koehnke
Chair, Sen. Koehnke

Stimatz
Sen. Stimatz

Grosfield
Sen. Grosfield

For the House:

O'Keefe
Chair, Rep. O'Keefe

Barnhart
Rep. Barnhart

Knox
Rep. Knox

4-24-91
Md. Coord.

872 4-24
Sec. of Senate

SENATE BILL NO. 266

INTRODUCED BY GROSFIELD, BENGTON, SWYSGOOD,

GRADY, THOFT

BY REQUEST OF THE DEPARTMENT OF

NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING PERMIT---EXCEPTIONS OBJECTIONS; MAKING PERMISSIVE AND AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS; ~~INCLUDING-WATER-QUALITY-CRITERIA-IN-THE-ISSUANCE-OF-A-PERMIT~~ OR---CHANGE---AUTHORIZATION; AMENDING SECTIONS 85-2-102, 85-2-113, 85-2-236, 85-2-306, 85-2-308, 85-2-312, 85-2-315, 85-2-317, 85-2-402, AND 85-2-424, ~~AND--85-2-501~~, AND 85-2-501, MCA; ~~REPEALING--SECTION--85-2-317---~~MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A-RETROACTIVE AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide a guideline on the payment of fees. Rulemaking authority is granted to the board of natural resources and conservation to establish a fee schedule for payment of fees

to be paid to the department for its costs incurred in providing water rights record information to a clerk and recorder. It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs. A published fee schedule will enable a clerk and recorder to know the cost prior to seeking the information from the department.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power,

1 and recreational uses;

2 (b) a use of water appropriated by the department for
3 the state water leasing program under 85-2-141 and of water
4 leased under a valid lease issued by the department under
5 85-2-141; and

6 (c) a use of water by the department of fish, wildlife,
7 and parks pursuant to a lease authorized under 85-2-436.

8 (3) "Board" means the board of natural resources and
9 conservation provided for in 2-15-3302.

10 (4) "Certificate" means a certificate of water right
11 issued by the department.

12 (5) "Change in appropriation right" means a change in
13 the place of diversion, the place of use, the purpose of
14 use, or the place of storage.

15 (6) "Commission" means the fish and game commission
16 provided for in 2-15-3402.

17 (7) "Declaration" means the declaration of an existing
18 right filed with the department under section 8, Chapter
19 452, Laws of 1973.

20 (8) "Department" means the department of natural
21 resources and conservation provided for in Title 2, chapter
22 15, part 33.

23 (9) "Existing right" means a right to the use of water
24 which would be protected under the law as it existed prior
25 to July 1, 1973.

1 (10) "Ground water" means any water that is beneath the
2 ~~land---surface---or---beneath---the---bed---of---a---stream,---lake,~~
3 ~~reservoir,---or---other---body---of---surface---water,---and---which---is---not~~
4 ~~a-part-of-that-surface-water~~ ground surface.

5 (11) "Permit" means the permit to appropriate issued by
6 the department under 85-2-301 through 85-2-303 and 85-2-306
7 through 85-2-314.

8 (12) "Person" means an individual, association,
9 partnership, corporation, state agency, political
10 subdivision, the United States or any agency thereof, or any
11 other entity.

12 (13) "Political subdivision" means any county,
13 incorporated city or town, public corporation, or district
14 created pursuant to state law or other public body of the
15 state empowered to appropriate water but not a private
16 corporation, association, or group.

17 (14) "Waste" means the unreasonable loss of water
18 through the design or negligent operation of an
19 appropriation or water distribution facility or the
20 application of water to anything but a beneficial use.

21 (15) "Water" means all water of the state, surface and
22 subsurface, regardless of its character or manner of
23 occurrence, including but not limited to geothermal water,
24 diffuse surface water, and sewage effluent.

25 (16) "Water division" means a drainage basin as defined

1 in 3-7-102.

2 (17) "Water judge" means a judge as provided for in
3 Title 3, chapter 7.

4 (18) "Water master" means a master as provided for in
5 Title 3, chapter 7.

6 (19) "Well" means any artificial opening or excavation
7 in the ground, however made, by which ground water is sought
8 or can be obtained or through which it flows under natural
9 pressures or is artificially withdrawn. (Terminates June 30,
10 1993--sec. 11, Ch. 658, L. 1989.)

11 85-2-102. (Effective July 1, 1993) Definitions. Unless
12 the context requires otherwise, in this chapter the
13 following definitions apply:

14 (1) "Appropriate" means to divert, impound, or withdraw
15 (including by stock for stock water) a quantity of water or,
16 in the case of a public agency, to reserve water in
17 accordance with 85-2-316.

18 (2) "Beneficial use", unless otherwise provided, means:

19 (a) a use of water for the benefit of the appropriator,
20 other persons, or the public, including but not limited to
21 agricultural (including stock water), domestic, fish and
22 wildlife, industrial, irrigation, mining, municipal, power,
23 and recreational uses; and

24 (b) a use of water appropriated by the department for
25 the state water leasing program under 85-2-141 and of water

1 leased under a valid lease issued by the department under
2 85-2-141.

3 (3) "Board" means the board of natural resources and
4 conservation provided for in 2-15-3302.

5 (4) "Certificate" means a certificate of water right
6 issued by the department.

7 (5) "Change in appropriation right" means a change in
8 the place of diversion, the place of use, the purpose of
9 use, or the place of storage.

10 (6) "Declaration" means the declaration of an existing
11 right filed with the department under section 8, Chapter
12 452, Laws of 1973.

13 (7) "Department" means the department of natural
14 resources and conservation provided for in Title 2, chapter
15 15, part 33.

16 (8) "Existing right" means a right to the use of water
17 which would be protected under the law as it existed prior
18 to July 1, 1973.

19 (9) "Ground water" means any water that is beneath the
20 ~~land--surface--or--beneath--the--bed--of--a--stream,--lake,~~
21 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
22 ~~a--part--of--that--surface--water~~ ground surface.

23 (10) "Permit" means the permit to appropriate issued by
24 the department under 85-2-301 through 85-2-303 and 85-2-306
25 through 85-2-314.

1 (11) "Person" means an individual, association,
2 partnership, corporation, state agency, political
3 subdivision, the United States or any agency thereof, or any
4 other entity.

5 (12) "Political subdivision" means any county,
6 incorporated city or town, public corporation, or district
7 created pursuant to state law or other public body of the
8 state empowered to appropriate water but not a private
9 corporation, association, or group.

10 (13) "Waste" means the unreasonable loss of water
11 through the design or negligent operation of an
12 appropriation or water distribution facility or the
13 application of water to anything but a beneficial use.

14 (14) "Water" means all water of the state, surface and
15 subsurface, regardless of its character or manner of
16 occurrence, including but not limited to geothermal water,
17 diffuse surface water, and sewage effluent.

18 (15) "Water division" means a drainage basin as defined
19 in 3-7-102.

20 (16) "Water judge" means a judge as provided for in
21 Title 3, chapter 7.

22 (17) "Water master" means a master as provided for in
23 Title 3, chapter 7.

24 (18) "Well" means any artificial opening or excavation
25 in the ground, however made, by which ground water is sought

1 or can be obtained or through which it flows under natural
2 pressures or is artificially withdrawn."

3 **Section 2.** Section 85-2-113, MCA, is amended to read:

4 "**85-2-113. Board powers and duties.** (1) The board may
5 prescribe fees or service charges for any public service
6 rendered by the department under this chapter, including
7 fees for the filing of applications or for the issuance of
8 permits and certificates, for rulemaking hearings under
9 85-2-319, for administrative hearings conducted under this
10 chapter, for investigations concerning permit revocation,
11 for field verification of issued and completed permits, and
12 all change approvals. There shall be no fees for any action
13 taken by the department at the request of the water judge or
14 for the issuance of certificates of existing rights.

15 (2) The board may adopt rules necessary to implement
16 and carry out the purposes and provisions of this chapter.
17 These rules may include but are not limited to rules to:

18 (a) govern the issuance and terms of interim permits
19 authorizing an applicant for a regular permit under this
20 chapter to begin appropriating water immediately, pending
21 final approval or denial by the department of the
22 application for a regular permit;

23 (b) require the owner or operator of appropriation
24 facilities to install and maintain suitable controlling and
25 measuring devices, except that the board may not require a

meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of 100 gallons-a-minute the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

(2)--The department shall provide to--the--county--clerk

and-recorder-of-the-county-wherein-the-point-of-diversion-or place--of--use--is--located--quarterly-reports-and-an-annual summary-report-of-all-certificates-of-water-right-issued--by the-department-within-the-county."

SECTION 4. SECTION 85-2-306, MCA, IS AMENDED TO READ:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of less-than-100 35 gallons per minute or less, not to exceed 10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the

department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refileing a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to

85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less--than ±00 35 gallons per minute or less, not to exceed 10 acre feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during

dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 5. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(2)(b) The objection to an application for a permit must state the name and address of the objector and facts tending to show that there-are-no-unappropriated--waters--in the---proposed---source;---that---the---proposed---means--of appropriation--are--inadequate;--that--the--property;--water rights;--or-interests-of--the--objector--would--be--adversely

affected--by--the--proposed-appropriation;--that--the--proposed use-of-water-is-not-a-beneficial-use;--or--that--the--proposed use--will--interfere-unreasonably-with-other-planned-uses-or developments-for-which-a-permit-has-been-issued-or-for-which water-has-been-reserved one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-402 are not met.

(3) A PERSON HAS STANDING TO FILE AN OBJECTION UNDER THIS SECTION IF THE PROPERTY, WATER RIGHTS, OR INTERESTS OF THE OBJECTOR WOULD BE ADVERSELY AFFECTED BY THE PROPOSED APPROPRIATION.

(4) FOR AN APPLICATION FOR A RESERVATION OF WATER, THE OBJECTION MUST STATE THE NAME AND ADDRESS OF THE OBJECTOR AND FACTS TENDING TO SHOW THAT ONE OR MORE OF THE CRITERIA IN 85-2-316 ARE NOT MET."

Section 6. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the

1 appropriation or related diversion or construction. The
2 department may issue a permit subject to terms, conditions,
3 restrictions, and limitations it considers necessary to
4 satisfy the criteria listed in 85-2-311, and it may issue
5 temporary or seasonal permits. A permit shall be issued
6 subject to existing rights and any final determination of
7 those rights made under this chapter.

8 (2) The department shall specify in the permit or in
9 any authorized extension of time provided in subsection (3),
10 the time limits for commencement of the appropriation works,
11 completion of construction, and actual application of the
12 water to the proposed beneficial use. In fixing those time
13 limits, the department shall consider the cost and magnitude
14 of the project, the engineering and physical features to be
15 encountered, and, on projects designed for gradual
16 development and gradually increased use of water, the time
17 reasonably necessary for that gradual development and
18 increased use. The department shall issue the permit or
19 authorized extension of time subject to the terms,
20 conditions, restrictions, and limitations it considers
21 necessary to ensure that the work on the appropriation is
22 commenced, conducted, and completed and that the water is
23 actually applied in a timely manner to the beneficial use
24 specified in the permit.

25 (3) The department may, upon a showing of good cause,

1 extend time limits specified in the permit for commencement
2 of the appropriation works, completion of construction, and
3 actual application of the water to the proposed beneficial
4 use. All requests for extensions of time must be by
5 affidavit and must be filed with the department prior to the
6 expiration of the time limit specified in the permit or any
7 previously authorized extension of time. The department may
8 issue an order temporarily extending the time limit
9 specified in the permit for 120 days or until the department
10 has completed its action under this section, whichever is
11 greater. Upon receipt of a proper request for extension of
12 time, the department shall prepare a notice containing the
13 facts pertinent to the request for extension of time and
14 shall publish the notice in a newspaper of general
15 circulation in the area of the source. The department may
16 serve notice by first-class mail upon any public agency or
17 other person the department determines may be interested in
18 or affected by the request for extension of time. The
19 department shall hold a hearing on the request for extension
20 of time on its own motion or if requested by an interested
21 party. The department may grant the extension of time in the
22 absence of a hearing if no requests for a hearing are
23 received and the extension of time is granted as requested,
24 or the department may grant the extension of time in a
25 modified form by following the process established in

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85-2-310(2). Subsequent extensions of time may be made in the same manner.

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

~~{5}--The department shall provide to--the--county--clerk and recorder of the county wherein the point of diversion or place--of--use--is--located--quarterly reports and an annual summary report of all water right permits, certificates, and change--approvals--issued--by--the--department--within--the county--"~~

Section 7. Section 85-2-315, MCA, is amended to read:

"85-2-315. **Certificate of water right.** {1} Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the permit. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be

sent to the permittee, and a duplicate shall be kept in the office of the department in Helena.

~~{2}--The--department--shall--provide--to--the--county--clerk and recorder of the county wherein the point of diversion or place of use is located--quarterly--reports--and--an--annual summary--report--of--all--certificates--of--water--right--issued--by the department--within--the--county--"~~

SECTION 8. SECTION 85-2-317, MCA, IS AMENDED TO READ:

"85-2-317. **Limitation on appropriation of ground water.**

(1) After May 7, 1979, no application for a permit to appropriate ground water in excess of 3,000 acre feet per year may be granted, except pursuant to an act of the legislature permitting the specific appropriation [the effective date of this act], the department may not approve a permit to appropriate ground water in excess of 3,000 acre feet per year unless:

(a) the applicant proves and the department finds that the applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by

municipalities for municipal use or to appropriations for public water supplies as defined in 75-6-102 or to appropriations for the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a fine not exceeding \$5,000."

Section 9. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights.

(1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the

proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has

1 been made;

2 (v) the effects on private property rights by any
3 creation of or contribution to saline seep; and

4 (vi) the probable significant adverse environmental
5 impacts of the proposed use of water as determined by the
6 department pursuant to Title 75, chapter 1, or Title 75,
7 chapter 20.

8 (4) The department may not approve a change in purpose
9 of use or place of use for a diversion that results in 4,000
10 or more acre-feet of water a year and 5.5 or more cubic feet
11 per second of water being consumed unless:

12 (a) the applicant proves by clear and convincing
13 evidence and the department finds that the criteria in
14 subsections (2) and (3) are met; and

15 (b) the department then petitions the legislature and
16 the legislature affirms the decision of the department after
17 one or more public hearings.

18 (5) (a) The state of Montana has long recognized the
19 importance of conserving its public waters and the necessity
20 to maintain adequate water supplies for the state's water
21 requirements, including requirements for reserved water
22 rights held by the United States for federal reserved lands
23 and in trust for the various Indian tribes within the
24 state's boundaries. Although the state of Montana also
25 recognizes that, under appropriate conditions, the

1 out-of-state transportation and use of its public waters are
2 not in conflict with the public welfare of its citizens or
3 the conservation of its waters, the following criteria must
4 be met before out-of-state use may occur:

5 (b) The department and, if applicable, the legislature
6 may not approve a change in appropriation right for the
7 withdrawal and transportation of appropriated water for use
8 outside the state unless the appropriator proves by clear
9 and convincing evidence and, if applicable, the legislature
10 approves after one or more public hearings that:

11 (i) depending on the volume of water diverted or
12 consumed, the applicable criteria and procedures of
13 subsection (2) or (3) are met;

14 (ii) the proposed out-of-state use of water is not
15 contrary to water conservation in Montana; and

16 (iii) the proposed out-of-state use of water is not
17 otherwise detrimental to the public welfare of the citizens
18 of Montana.

19 (c) In determining whether the appropriator has proved
20 by clear and convincing evidence that the requirements of
21 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
22 department and, if applicable, the legislature shall
23 consider the following factors:

24 (i) whether there are present or projected water
25 shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable,

may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)~~(9) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)~~(10) The original of a change approval issued by the department must be sent to the applicant, and a duplicate

1 must be kept in the office of the department in Helena.

2 ~~{10}~~(11) A person holding an issued permit or change
3 approval that has not been perfected may change the place of
4 diversion, place of use, purpose of use, or place of storage
5 by filing an application for change pursuant to this
6 section.

7 ~~{11}~~(12) A change in appropriation right contrary to the
8 provisions of this section is invalid. An officer, agent,
9 agency, or employee of the state may not knowingly permit,
10 aid, or assist in any manner an unauthorized change in
11 appropriation right. A person or corporation may not,
12 directly or indirectly, personally or through an agent,
13 officer, or employee, attempt to change an appropriation
14 right except in accordance with this section. (Terminates
15 June 30, 1993---sec. 11, Ch. 658, L. 1989.)

16 05-2-492. (Effective July 1, 1993) Changes in
17 appropriation rights. (1) An appropriator may not make a
18 change in an appropriation right except as permitted under
19 this section and with the approval of the department or, if
20 applicable, of the legislature.

21 (2) Except as provided in subsections (3) through (5),
22 the department shall approve a change in appropriation right
23 if the appropriator proves by substantial credible evidence
24 that the following criteria are met:

25 (a) The proposed use will not adversely affect the

1 water rights of other persons or other planned uses or
2 developments for which a permit has been issued or for which
3 water has been reserved.

4 (b) The proposed means of diversion, construction, and
5 operation of the appropriation works are adequate.

6 (c) The proposed use of water is a beneficial use.

7 (d) The applicant has a possessory interest, or the
8 written consent of the person with the possessory interest,
9 in the property where the water is to be put to beneficial
10 use.

11 (3) The department may not approve a change in purpose
12 of use or place of use of an appropriation of 4,000 or more
13 acre-feet of water a year and 5.5 or more cubic feet per
14 second of water unless the appropriator proves by
15 substantial credible evidence that:

16 (a) the criteria in subsection (2) are met;

17 (b) the proposed change is a reasonable use. A finding
18 of reasonable use must be based on a consideration of:

19 (i) the existing demands on the state water supply, as
20 well as projected demands for water for future beneficial
21 purposes, including municipal water supplies, irrigation
22 systems, and minimum streamflows for the protection of
23 existing water rights and aquatic life;

24 (ii) the benefits to the applicant and the state;

25 (iii) the effects on the quantity and quality of water

1 for existing uses in the source of supply;

2 (iv) the availability and feasibility of using
3 low-quality water for the purpose for which application has
4 been made;

5 (v) the effects on private property rights by any
6 creation of or contribution to saline seep; and

7 (vi) the probable significant adverse environmental
8 impacts of the proposed use of water as determined by the
9 department pursuant to Title 75, chapter 1, or Title 75,
10 chapter 20.

11 (4) The department may not approve a change in purpose
12 of use or place of use for a diversion that results in 4,000
13 or more acre-feet of water a year and 5.5 or more cubic feet
14 per second of water being consumed unless:

15 (a) the applicant proves by clear and convincing
16 evidence and the department finds that the criteria in
17 subsections (2) and (3) are met; and

18 (b) the department then petitions the legislature and
19 the legislature affirms the decision of the department after
20 one or more public hearings.

21 (5) (a) The state of Montana has long recognized the
22 importance of conserving its public waters and the necessity
23 to maintain adequate water supplies for the state's water
24 requirements, including requirements for reserved water
25 rights held by the United States for federal reserved lands

1 and in trust for the various Indian tribes within the
2 state's boundaries. Although the state of Montana also
3 recognizes that, under appropriate conditions, the
4 out-of-state transportation and use of its public waters are
5 not in conflict with the public welfare of its citizens or
6 the conservation of its waters, the following criteria must
7 be met before out-of-state use may occur:

8 (b) The department and, if applicable, the legislature
9 may not approve a change in appropriation right for the
10 withdrawal and transportation of appropriated water for use
11 outside the state unless the appropriator proves by clear
12 and convincing evidence and, if applicable, the legislature
13 approves after one or more public hearings that:

14 (i) depending on the volume of water diverted or
15 consumed, the applicable criteria and procedures of
16 subsection (2) or (3) are met;

17 (ii) the proposed out-of-state use of water is not
18 contrary to water conservation in Montana; and

19 (iii) the proposed out-of-state use of water is not
20 otherwise detrimental to the public welfare of the citizens
21 of Montana.

22 (c) In determining whether the appropriator has proved
23 by clear and convincing evidence that the requirements of
24 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
25 department and, if applicable, the legislature shall

1 consider the following factors:

2 (i) whether there are present or projected water
3 shortages within the state of Montana;

4 (ii) whether the water that is the subject of the
5 proposed change in appropriation might feasibly be
6 transported to alleviate water shortages within the state of
7 Montana;

8 (iii) the supply and sources of water available to the
9 applicant in the state where the applicant intends to use
10 the water; and

11 (iv) the demands placed on the applicant's supply in the
12 state where the applicant intends to use the water.

13 (d) When applying for a change in appropriation right
14 to withdraw and transport water for use outside the state,
15 the applicant shall submit to and comply with the laws of
16 the state of Montana governing the appropriation and use of
17 water.

18 (6) For any application for a change in appropriation
19 right involving 4,000 or more acre-feet of water a year and
20 5.5 or more cubic feet per second of water, the department
21 shall give notice of the proposed change in accordance with
22 85-2-307 and shall hold one or more hearings in accordance
23 with 85-2-309 prior to its approval or denial of the
24 proposed change. The department shall provide notice and may
25 hold one or more hearings upon any other proposed change if

1 it determines that such a change might adversely affect the
2 rights of other persons.

3 (7) The department or the legislature, if applicable,
4 may approve a change subject to such terms, conditions,
5 restrictions, and limitations as it considers necessary to
6 satisfy the criteria of this section, including limitations
7 on the time for completion of the change. The department may
8 extend time limits specified in the change approval under
9 the applicable criteria and procedures of 85-2-312(3).

10 {8} Upon actual application of water to the proposed
11 beneficial use within the time allowed, the appropriator
12 shall notify the department that the appropriation has been
13 properly completed. The notification must contain a
14 certified statement by a person with experience in the
15 design, construction, or operation of appropriation works
16 that the appropriation has been properly completed in
17 substantial accordance with the terms and conditions of the
18 change approval.

19 {8}{9} If a change is not completed as approved by the
20 department or legislature or if the terms, conditions,
21 restrictions, and limitations of the change approval are not
22 complied with, the department may, after notice and
23 opportunity for hearing, require the appropriator to show
24 cause why the change approval should not be modified or
25 revoked. If the appropriator fails to show sufficient cause,

1 the department may modify or revoke the change approval.

2 ~~{9}~~(10) The original of a change approval issued by the
3 department must be sent to the applicant, and a duplicate
4 must be kept in the office of the department in Helena.

5 ~~{10}~~(11) A person holding an issued permit or change
6 approval that has not been perfected may change the place of
7 diversion, place of use, purpose of use, or place of storage
8 by filing an application for change pursuant to this
9 section.

10 ~~{11}~~(12) A change in appropriation right contrary to the
11 provisions of this section is invalid. No officer, agent,
12 agency, or employee of the state may knowingly permit, aid,
13 or assist in any manner such unauthorized change in
14 appropriation right. No person or corporation may, directly
15 or indirectly, personally or through an agent, officer, or
16 employee, attempt to change an appropriation right except in
17 accordance with this section."

18 **Section 10.** Section 85-2-424, MCA, is amended to read:

19 "85-2-424. **Filing.** (1) The transferor of a water right
20 or his agent or representative shall file with the
21 department a water right transfer certificate within 60 days
22 of recording a deed or other instrument evidencing a
23 transfer of real property.

24 (2) Except in the case of a transfer of real property
25 served by a public service water supply, when any person

1 presents for recording a deed or other instrument evidencing
2 a transfer of real property, the realty transfer certificate
3 shall note whether or not the transfer includes a transfer
4 of water rights. If the realty transfer certificate notes a
5 transfer of water rights, the clerk and recorder shall
6 provide such person the form prescribed under 85-2-423 for
7 the transfer of water rights. The recording of the deed or
8 other instrument shall not be delayed because of the
9 transfer of the water rights.

10 (3) The county clerk and recorder shall send to the
11 department a list of all transfers that involve transfers of
12 water rights. The list must be sent every month and must
13 include all transfers for the month immediately preceding
14 the date of submittal to the department. The list must
15 include the names and addresses of all parties to the
16 transfer and a legal description of the land subject to the
17 transfer.

18 ~~{4}--The-department-shall-send-a-reference-copy--of--the~~
19 ~~water--right-transfer-certificate-to-the-office-of-the-chief~~
20 ~~water-judge-and-to-the-county--clerk--and--recorder--in--the~~
21 ~~county-in-which-the-transfer-occurred;"~~

22 ~~Section-9--Section-85-2-501--MCA--is-amended-to-read:~~

23 ~~"85-2-501--Definitions--Unless--the--context--requires~~
24 ~~otherwise--in-this-part-the-following-definitions-apply:~~

25 ~~{1}--"Aquifer"---means---any---underground---geological~~

~~structure-or-formation-which-is-capable-of-yielding-water-or
is-capable-of-recharge-~~

~~{2}--"Bureau"--means-the-Montana-state--bureau--of--mines
and-geology-provided-for-in-20-25-211-~~

~~{3}--"Ground--water"--means-any-fresh FRESH-water-that-is
beneath-the-land-surface-or-beneath-the--bed--of--a--stream;
lake,-reservoir,-or-other-body-of-surface-water-and-which-is
not-a-part-of-that-surface-water ground-surface LAND-SURFACE
OR--BENEATH--THE--BED-OF-A-STREAM,-LAKE,-RESERVOIR,-OR-OTHER
BODY-OF-SURFACE-WATER-AND--WHICH--IS--NOT--A--PART--OF--THAT
SURFACE-WATER-~~

~~{4}--"Ground--water-area"--means-an-area-which,-as-nearly
as-known-facts-permit,-may-be-designated-so-as-to-enclose--a
single--and--distinct--body--of-ground-water,-which-shall-be
described-horizontally-by-surface-description-in--all--cases
and--which--may--be--limited--vertically-by-describing-known
geological-formations-should-conditions-dictate-this--to--be
desirable."~~

SECTION 11. SECTION 85-2-501, MCA, IS AMENDED TO READ:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines

and geology provided for in 20-25-211.

(3) "Ground water" means any fresh water that is beneath the land--surface--or-beneath-the-bed-of-a-stream, lake,-reservoir,-or-other-body-of-surface-water-and-which-is not-a-part-of-that-surface-water ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

NEW SECTION. Section 12. Water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.

~~NEW-SECTION--Section-11--Repealer--Section--85-2-317,
MCA-is-repeated-~~

NEW SECTION. Section 13. Codification instruction. [Section ~~10~~ 11 ~~10~~ 12] is intended to be codified as an

1 integral part of Title 85, chapter 2, and the provisions of
2 Title 85, chapter 2, apply to [section ~~10 11 10~~ 12].

3 NEW SECTION. Section 14. ~~retroactive~~ applicability
4 APPLICABILITY. ~~{1}--{Sections--4--and--7,--concerning--water~~
5 ~~quality-criteria}--apply--retroactively,--within--the--meaning--of~~
6 ~~1-2-109,--to--all--applications--pending--before--the--department~~
7 ~~of--natural--resources--and--conservation--for--which--a--permit--or~~
8 ~~change--authorization--has--not--been--issued--on--{the--effective~~
9 ~~date--of--this--act}.~~

10 {2} [Sections 6 7 and 7 8 7 8], concerning
11 certification by a ~~professional--engineer~~ PERSON WITH
12 EXPERIENCE IN THE DESIGN, CONSTRUCTION, OR OPERATION OF
13 APPROPRIATION WORKS, ~~apply retroactively,--within--the--meaning~~
14 ~~of--1-2-109,~~ to all permits ~~for--which--a--notice--of--completion~~
15 ~~has--not--been--filed--on~~ and to change approvals issued after
16 [the effective date of this act].

17 NEW SECTION. Section 15. Effective date. [This act] is
18 effective ~~on--passage--and--approval~~ JULY 1, 1991.

-End-